***United States Court of Appeals***

***for the Second Circuit***

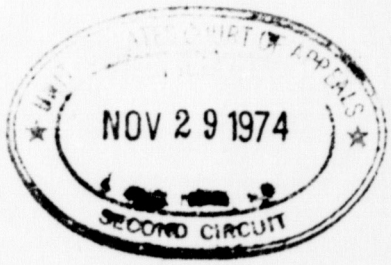
# APPENDIX

74-1651

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT




RETIRED PERSONS PHARMACY, t/a
NRTA-AARP PHARMACY,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON PETITION TO REVIEW AND CROSS-APPLICATION
TO ENFORCE AN ORDER OF THE NATIONAL LABOR
RELATIONS BOARD IN CASE NO. 210 N.L.R.B. NO. 65

# JOINT APPENDIX
# AND RELATED DOCUMENTS DESIGNATED BY THE PETITIONER

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Washington, D.C. 20570
Respondent
Peter G. Nash, General Counsel
John S. Irving, Deputy General Counsel
Patrick Hardin, Associate General Counsel
Elliott Moore, Deputy Associate General Counsel
Robert G. Sewell, Attorney

Michael W. Josserand, Attorney

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Re: Retired Persons Pharmacy,
t/a NRTA-AARP Pharmacy
National Labor Relations Board

**AFFIDAVIT OF SERVICE BY MAIL**

STATE OF NEW YORK,
CITY OF NEW YORK,
COUNTY OF New York, ss.:

Alfred Bush, Jr., being duly sworn, deposes and says that he is over 18 years of age. That on the 21st day of November, 1974, he served 1 copies of the within Joint Appendix upon Robert D. Sewell, N.L.R.B., the attorneys for the above-named Respondent, by depositing 1 copy of the same securely enclosed in a post-paid wrapper in a branch depository maintained and exclusively controlled by the United States Post Office at Canal Street, N.Y.C., addressed to said attorney for the Respondent at No. 1717 Pennsylvania Avenue, N.W. Washington, D.C. 20570, that being the address within the State designated by them for that purpose upon the preceding papers as the place where they regularly kept an office, and at which place they regularly received mail.

Sworn to before me this
21st day of November, 1974.

PETER MEILEN
NOTARY PUBLIC, State of New York
No. 31-7636275
Qualified in New York County
Commission Expires March 30, 1975

Alfred Bush

PAGINATION AS IN ORIGINAL COPY

# JOINT APPENDIX

## AND RELATED DOCUMENTS DESIGNATED BY THE PETITIONER

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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| RETIRED PERSONS PHARMACY, t/a NRTA-AARP PHARMACY<br><br>Petitioner,<br><br>v.<br><br>NATIONAL LABOR RELATIONS BOARD,<br><br>Respondent. | ) | No. 74-1651 |

CERTIFIED LIST OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary duly authorized by Section 102.115, Rules and Regulations of the National Labor Relations Board - Series 8, hereby certifies that the list set forth below constitutes a full and accurate transcript of the entire original record of a proceeding had before said Board and known upon its records as Case No. 5-CA-6108. Such transcript includes the pleadings and testimony and evidence upon which the Order of the Board was entered and includes also the findings and order of the Board.

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4. Copy of Petitioner's Exceptions to the Decision of the Administrative Law Judge received November 16, 1973. . . . . 1 - 20

5. Copy of General Counsel's letter opposing such a lengthy extension dated November 20, 1973. . . . . 1

6. Copy of Board's teletype extending time for filing brief to December 13, 1973 dated November 20, 1973. . . . . 1

7. Copy of Petitioner's letter requesting oral argument dated December 19, 1973 (Denied, see Board's Decision and Order, page 1, footnote 1). 1

8. Copy of Decision and Order issued by the National Labor Relations board dated April 30, 1974. . . . . 1 - 2


IN TESTIMONY WHEREOF, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this JUN 20 1974 day of

/s/ John C. Truesdale
John C. Truesdale
Executive Secretary
NATIONAL LABOR RELATIONS BOARD

(SEAL)

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Retired Persons Pharmacy, t/a NRTA-AARP Pharmacy

Case No.: 5-CA-6108

| | |
|---|---|
| 5.14.73 | Charge filed |
| 5.22.73 | First Amended Charge filed |
| 7.2.73 | Complaint and Notice of Hearing, issued |
| 7.11.73 | Petitioner's Motion for Extension of Time to File Answer and for Rescheduling of Hearing, received |
| 7.13.73 | Order Rescheduling Hearing, issued |
| 7.16.73 | Petitioner's Answer, received |
| 7.16.73 | Petitioner's Demand for Bill of Particulars, received |
| 7.16.73 | Petitioner's Motion for a Protective Order or Order of Severance and Direction of Immediate Hearing, received |
| 7.20.73 | General Counsel's Opposition to Petitioner's Demand for Bill of Particulars and Partial Bill of Particulars, issued |
| 7.20.73 | General Counsel's Opposition to Respondent's Motion for a Protective Order or Order of Severance and Direction of Immediate Hearing, issued |
| 8.3.73 | Administrative Law Judge's Order on Petitioner's Demand for Bill of Particulars, received |
| 8.3.73 | Administrative Law Judge's Order on Petitioner's Motion for a Protective Order or Order of Severance and Direction of Immediate Hearing, received |
| 8.7.73 | Petitioner's Request for Special Permission to Appeal to the National Labor Relations Board, received |
| 8.9.73 | General Counsel's Opposition to Petitioner's Request for Special Permission to Appeal to the National Labor Relations Board, issued |
| 8.14.73 | Board's teletype denying Petitioner's request for Special Permission to Appeal Administrative Law Judge Ruling denying Motion for Protective Order and for Immediate Hearing, dated |
| 8.14.73 | Stipulations of Fact, received at the hearing |
| 8.14.73 | General Counsel's Amendments to the Complaint, received at the hearing |
| 8.14.73 | Hearing opened |
| 8.14.73 | Hearing closed |

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES (Cont'd)

In the Matter of: Retired Persons Pharmacy, t/a
RTA-AARP Pharmacy

Case No.: 5-CA-6108

| | |
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| 9.21.73 | General Counsel's Motion to Correct Record, dated |
| 10.30.73 | Administrative Law Judge's Decision, issued |
| 11.15.73 | Petitioner's letter requesting a two month extension for the filing of its brief to February 23, 1974, dated |
| 11.16.73 | Petitioner's Exceptions to the Decision of the Administrative Law Judge, received |
| 11.20.73 | General Counsel's letter opposing such a length extension, dated |
| 11.20.73 | Board's teletype extending time for filing brief to December 13, 1973 dated |
| 12.19.73 | Petitioner's letter requesting oral argument, dated |
| 4.30.73 | Decision and Order issued by the National Labor Relations Board, dated |

SELECTED GENERAL COUNSEL EXHIBITS

IN NLRB CASE NO. 5-CA-6108

FORM NLRB-501
(12-65)

Form Approved
Budget Bureau No. 64-R001.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

# CHARGE AGAINST EMPLOYER

*INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.*

DO NOT WRITE IN THIS SPACE

Case No. 5-CA-6108

Date Filed 5/14/73

## 1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: NRTA-AARP Pharmacy

b. Number of Workers Employed: 30

c. Address of Establishment (Street and number, city, State, and ZIP code): 1224 - 24th Street, N.W., Wash, D.C.

d. Employer Representative to Contact: Robert Lewis, Esq.

e. Phone No.: 212-947-2000

f. Type of Establishment (Factory, mine, wholesaler, etc.): Mail Order Pharmacy

g. Identify Principal Product or Service: Drugs

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and 8(a)(5) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about April 19, 1973, the employer has violated Section 8(a)(5) and (1) of the Act by refusing to bargain collectively with the bargaining agent, the Metropolitan Guild of Pharmacists.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)

Metropolitan Guild of Pharmacits

4a. Address (Street and number, city, State, and ZIP code): 110 Hamilton Avenue, Silver Spring, Maryland

4b. Telephone No.: 333-2700

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

None

## 6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By [signature] Attorney
(Signature of representative or person filing charge) (Title, if any)

Address 3244 Prospect Street, N.W. Washington, D.C. 20007 212-333-2700 May 7, 1973
(Telephone number) (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GENERAL COUNSEL'S EXHIBIT NO. 1-A

GPO 904-534

FORM NLRB-501 (2-67)

Form Approved
Budget Bureau No. 64-R001.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

# FIRST AMENDED CHARGE AGAINST EMPLOYER

*INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.*

DO NOT WRITE IN THIS SPACE

Case No. 5-CA-6108

Date Filed 5/22/73

## 1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: NRTA-AARP Pharmacy

b. Number of Workers Employed: 30

c. Address of Establishment (Street and number, city, State, and ZIP code): 1224- 24th Street,N.W.,Wash.,D.C.

d. Employer Representative to Contact: Robert Lewis, Esq.

e. Phone No.: 212-947-2000

f. Type of Establishment (Factory, mine, wholesaler, etc.): Mail Order Pharmacy

g. Identify Principal Product or Service: Drugs

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and 8(a)(5) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

FIRST AMENDED CHARGE

Since on or about April 19, 1973, the employer has violated Section 8(a)(5) and (1) of the Act by refusing to bargain collectively with the bargaining agent, the Metropolitan Guild of Pharmacists, in the certified appropriate unit, to wit: all registered and/or graduate pharmacists employed by the Employer at 1224 24th Street, N.W., Washington, D.C., but excluding office clerical employees, all other employees, guards and supervisors as defined in the Act.

On May 21,1973, the employer violated Section 8(a)(1) of the Act by conducting a poll of the employees in the unit certified to identify their Guild affiliation in a non-laboratory setting thereby interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)

Metropolitan Guild of Pharmacists

4a. Address (Street and number, city, State, and ZIP code): 110 Hamilton Avenue, Silver Spring, Maryland

4b. Telephone No.: 333-2700

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

None

## 6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By [signature] Attorney
(Signature of representative or person filing charge) (Title, if any)

Address 3244 Prospect Street, N.W.
Washington, D.C. 20007 212-333-2700 May 21, 1973
(Telephone number) (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 891-604

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIFTH REGION

MRTA-AARP PHARMACY

and

Case No. 5-CA-6108

METROPOLITAN GUILD OF PHARMACISTS

COMPLAINT AND NOTICE OF HEARING

It having been charged by Metropolitan Guild of Pharmacists, herein called the Guild, that MRTA-AARP Pharmacy, herein called Respondent, has been engaging in and is engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for the Fifth Region, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, hereby issues this complaint and notice of hearing and alleges as follows:

1. (a) The original charge herein was filed by the Guild on May 14, 1973, and was served on Respondent, by registered mail, on May 17, 1973.

(b) The first amended charge herein was filed by the Guild on May 22, 1973, and was served on Respondent, by registered mail, on May 22, 1973.

2. (a) MRTA-AARP is a District of Columbia corporation engaged in the sale and distribution of drugs and related products.

(b) Respondent, during the preceding 12 months, a representative period, received materials and supplies from places located directly outside the District of Columbia valued in excess of $50,000, and sold and shipped goods valued in excess of $50,000 to points located directly outside the District of Columbia.

(c) At all times material herein, Respondent is, and has been, an "employer" as defined in Section 2(2) of the Act, engaged in "commerce" and in operations "affecting commerce" as defined in Section 2(6) and (7) of the Act, respectively.

3. At all times material herein, the Guild is, and has been, a labor organization within the meaning of Section 2(5) of the Act.

"EXHIBIT A"

1-E

4. At all times material herein, Robert Altmann has occupied the position of manager of Respondent and has been, and is now, an agent of Respondent, acting on its behalf, and a supervisor within the meaning of Section 2(11) of the Act.

5. On November 29, 1971, the Regional Director for Region Five of the Board, in Case No. 5-RC-7782, certified the Union as the collective bargaining representative for all employees, including all registered and/or graduate pharmacists employed by the Respondent at its Washington, D. C., location, but excluding all other employees, guards and supervisors as defined in the Act.

6. On or about September 1, 1972, the Guild, as the certified representative of Respondent's employees as set forth in paragraph 5 above, and the Respondent executed a collective bargaining agreement which by its terms remained in full force and effect from May 29, 1972, until May 29, 1973.

7. Since on or about March 7, 1973, and continuing to date, the Guild, as the certified representative of Respondent's employees as set forth in paragraph 5 above, has requested, and is requesting, the Respondent to bargain collectively with respect to a new agreement covering rates of pay, wages, hours of employment and other conditions of employment of said employees.

8. Since on or about April 19, 1972, Respondent has failed and refused, and continues to refuse, to bargain in good faith with the Guild and has engaged in a course of conduct designed to undermine the Guild's status as collective bargaining representative of Respondent's employees as set forth in paragraph 5 above by:

(a) On or about April 19, 1973, and at all times thereafter, refusing to meet and bargain with the Guild;

(b) On or about May 21, 1973, without notice to or bargaining with the Guild, interrogating its pharmacist employees in the unit set forth in paragraph 5 above with regard to their membership in and activities on behalf of the Guild;

(c) On or about May 30, 1973, unilaterally and without notice to and bargaining with the Union reducing the work week from 42½ hours to 40 hours.

9. By the acts and conduct alleged above, the Respondent has engaged in, and is engaging in, unfair labor practices, as defined in Section 8(a)(1) and (5) of the Act, affecting "commerce" as defined in Section 2(6) of the Act.

PLEASE TAKE NOTICE that on the 1st day of August, 1973, at 10 a.m. E.I in Hearing Room 500, Postal Rate Commission, 2000 - L Street, N. W., Washington D. C., a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended, the Respondent shall file with the undersigned Regional Director, acting in this matter as an agent of the National Labor Relations Board, an original and four copies of an answer to said complaint within 10 days from the service thereof, and that unless it does so, all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board. You are also notified that pursuant to said Rules and Regulations, Respondent shall serve a copy of the answer on each of the other parties.

Form NLRB-4668, Statement of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

Dated at Baltimore, Maryland, this 2nd day of July, 1973.

(SEAL)

WILLIAM C. HUMPHREY

William C. Humphrey, Regional Director
National Labor Relations Board
Fifth Region
1019 Federal Building, Charles Center
Baltimore, Maryland 21201

Attachment

Re: [redacted] d/b/a
META-AARP PHARMACY
Case No. 5-CA-6108

[redacted]'S AMENDMENTS TO THE COMPLAINT

1. Change the name of Respondent from "META-AARP PHARMACY" to "[redacted], d/b/a META-AARP PHARMACY."

2. Substitute the following paragraph for paragraph 5:

"5. On November 29, 1971, the Regional Director for Region Five of the Board, on behalf of the Board, in Case No. 5-RC-7782, certified the Guild as the collective bargaining representative for all registered and/or graduate pharmacists employed by the Employer at its Washington, D.C. location, but excluding office clerical employees, all other employees, guards and supervisors as defined in the Act."

3. Delete the semi-colon at the end of paragraph 8(b) and add the following:

" , and with regard to other employees' membership in and activities on behalf of the Guild;"

G.C. #2

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DIVISION OF JUDGES

(FIFTH REGION)

| | | |
|---|---|---|
| RETIRED PERSONS PHARMACY, Respondent, -and- METROPOLITAN GUILD OF PHARMACISTS, Charging Party. | : | CASE NO. 5-CA-6108 |

ANSWER TO COMPLAINT

Respondent, RETIRED PERSONS PHARMACY, by its attorneys and pursuant to Section 102.20 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, answering the Complaint herein___/, respectfully alleges as follows:

1. Admits the allegations contained in paragraphs 1(a) and 1(b) of the Complaint.

2. Admits upon information and belief the allegations contained in paragraphs 2(a), 2(b) and 2(c) of the Complaint.

3. Admits the allegations contained in paragraph 3 of the Complaint.

4. Admits the allegations contained in paragraph 4 of the Complaint.

___/ The Complaint names "NRTA-AARP Pharmacy" as Respondent. The correct name of the Respondent appears in the caption above. Respondent's answers are given subject to this amendment.

5. Admits the allegations contained in paragraph 5 of the Complaint, except denies the allegations that (a) the Regional Director for Region Five certified the Guild as the collective bargaining representative "for all employees, including" the classifications of registered and/or graduate pharmacists, and (b) the Regional Director omitted the classification of office clerical employees from the exclusion to the said certification.

6. Admits the allegations contained in paragraph 6 of the Complaint, except denies the allegation that the Guild was the certified representative of Respondent's employees "as set forth in paragraph 5" of the Complaint.

7. Admits the allegations contained in paragraph 7 of the Complaint, except denies the allegation that the Guild was the certified representative of Respondent's employees "as set forth in paragraph 5" of the Complaint.

8. Denies each and every allegation contained in paragraphs 8(a), 8(b) and 8(c) of the Complaint.

9. Denies each and every allegation contained in paragraph 9 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

As and for a first affirmative defense Respondent asserts that General Counsel's prosecution of the Complaint violates Respondent's right to due process of law and the effective representation of counsel guaranteed by the Constitution, laws and regulations of the United States and its governmental agencies.

SECOND AFFIRMATIVE DEFENSE

As and for a second affirmative defense Respondent asserts that the Guild did not continue to have the support of a majority of Respondent's registered and/or graduate pharmacists on, about or after April 19, 1973.

WHEREFORE, Respondent prays that the Complaint be dismissed in its entirety.

DATED: New York, New York
July 12, 1973

Respectfully submitted,

JACKSON, LEWIS, SCHNITZLER & KRUPMAN
11 West 42nd Street
New York, New York 10036
Telephone: (212) 947-2000

BY: _____
Robert Lewis
Attorneys for Respondent

Copies have been served this 12th day of July, 1973 on all interested parties.

Roger S. Kyle

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DIVISION OF JUDGES

(FIFTH REGION)

| | | |
|---|---|---|
| RETIRED PERSONS PHARMACY,[1] Respondent, | : | |
| -and- | : | CASE NO. 5-CA-6108 |
| METROPOLITAN GUILD OF PHARMACISTS, Charging Party. | : | |

TO: HONORABLE EUGENE G. GOSLEE
Chief Administrative Law Judge
National Labor Relations Board
1231 25th Street, N.W.
Washington, D.C. 20037

RESPONDENT'S MOTION FOR A PROTECTIVE ORDER OR ORDER OF SEVERANCE AND DIRECTION OF IMMEDIATE HEARING

RETIRED PERSONS PHARMACY, Respondent in the above-entitled matter, respectfully moves for an Order of the Administrative Law Judge, pursuant to Sections 102.24 and .25 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, enjoining the General Counsel of the National Labor Relations Board and his agents, including the Regional Director for the Fifth Region, from amending the Complaint dated July 2, 1973, to allege any additional violations of Section 8(a) of the National Labor Relations Act, as amended, resulting from Respondent's counsel hereafter interviewing employees as part of counsel's preparation for trial, or for an order of severance on the issue of counsel's interviewing and the direction

[1] The name of Respondent appears as amended in the Answer To Complaint.

of an immediate hearing thereon, and for such other and further relief as to the Administrative Law Judge may seem just and proper in the premises.

In support of this Motion, Respondent respectfully shows as follows:

1. The Charging Party, METROPOLITAN GUILD OF PHARMACISTS (hereinafter "the Union"), was certified by the Board on November 29, 1971. Respondent thereafter entered into a collective bargaining agreement with the Union which expired by its terms on May 29, 1973.

2. On or about May 17, 1973, upon information and belief, the Union filed an unfair labor practice with Region 5 of the Board alleging that Respondent had violated Section 8(a)(5) of the Act, by refusing to bargain with the Union as the exclusive representative for certain of its employees.

3. Following receipt of the charge, counsel for Respondent on May 21, 1973, interviewed employees in the unit described in paragraph 5 of the Complaint to prepare its defense to the charge. This interviewing was lawful and proper.

4. On May 25, 1973, the Union filed an amended charge alleging, inter alia, the unlawful polling of employees.

5. On July 2, 1973, the Regional Director for Region 5, on behalf of the General Counsel, issued the Complaint herein, alleging in paragraph 8(b) thereof that Respondent violated the Act by:

> "On or about May 21, 1973, without notice to or bargaining with the Guild, interrogating its pharmacists employees in the unit set forth in paragraph 5 above with regard to their membership in and activities on behalf of the Guild...." (Exhibit A)

Upon information and belief, this allegation relates to the employee interviewing conducted by Respondent's counsel, referred to in paragraph 3 above.

6. Section 102.38 of the Board's Rules and Regulations assures a respondent the right to appear by counsel at an unfair labor practice hearing. Appearance by counsel means the effective representation by counsel adequately prepared.

7. Adequate preparation for trial requires, in counsel's judgment, that some or all of the employees be interviewed and re-interviewed as to issues raised in the Complaint. Yet, counsel does not know what prior conduct is being complained of as unlawful interrogation. It cannot, therefore, prudently minimize the risk of further allegations of misconduct arising from such preparation.

8. *General Counsel's allegation that counsel's interviewing of employees was unlawful has a chilling effect upon Respondent and its counsel. If counsel cannot undertake to effectively represent its client without risking an amended complaint alleging additional violations, its efforts will be unduly inhibited and its professional responsibilities compromised.*

9. Where, as here, one adversary charges another's attorney with wrongdoing, and threatens sanctions, it is proper for the Administrative Law Judge to exercise the plenary authority granted him pursuant to Section 102.35 of the Board's Rules and Regulations, Section 201.1.3 of the Board's Description of Organization, as amended, and Section 17114.1 of the Division of Trial Examiners Public Manual, to grant the relief herein requested.

10. In the alternative, Respondent moves for an order pursuant to Section 102.35 of the Rules and Regulations severing the allegations contained in paragraph 8(b) of the Complaint from other issues, and directing an immediate hearing to allow full litigation of the interrogation question prior to further proceeding on the other allegations. Respondent's counsel will then have a clear ruling as to the legality of its interviewing, and it will be able to properly represent Respondent without fear of further alleged, but unspecified, violations.

11. The issue of counsel's preparation is readily isolable from other issues in the case. It deserves to be tried first since it directly affects Respondent's ability and method of defending against other allegations. Prior resolution of the issue will not unnecessarily prolong these proceedings since the essential facts are not disputed. The Regional Director has been furnished with the questions asked of employees and with Respondent counsel's preliminary statement of introduction. The issue of Respondent counsel's preparation is thus appropriate for expedited resolution under Section 102.35(i).

WHEREFORE, for all of the foregoing reasons, Respondent's Motion For A Protective Order Or Order Of Severance And Direction Of Immediate Hearing should be granted.

Respectfully submitted,

JACKSON, LEWIS, SCHNITZLER & KRUPMAN
11 West 42nd Street
New York, New York 10036
Telephone: (212) 947-2000

BY: Robert Lewis
ROBERT LEWIS

DATED: New York, New York
July 12, 1973

Copies have been served this day on the following counsel at the addresses listed below:

William C. Humphrey, Esq.
Regional Director, Fifth Region
National Labor Relations Board
1019 Federal Building, Charles Center
Baltimore, Maryland 21201

Ira M. Lechner, Esq.
3244 Prospect Street, N.W.
Washington, D.C. 20007

Peter G. Nash, Esq.
General Counsel
National Labor Relations Board
1717 Pennsylvania Avenue, N.W.
Washington, D.C. 20570

Roger S. Kaplan

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5



NRTA-AARP PHARMACY

and

Case No. 5-CA-6108

METROPOLITAN GUILD OF PHARMACISTS

OPPOSITION TO RESPONDENT'S MOTION FOR
A PROTECTIVE ORDER OR ORDER OF SEVERANCE AND
DIRECTION OF IMMEDIATE HEARING

Comes now Counsel for the General Counsel and opposes Respondent's Motion for a Protective Order or Order of Severance and Direction of Immediate Hearing.

Respondent's request for a "protective order" enjoining the General Counsel "and his agents, including the Regional Director for the Fifth Region" from amending the Complaint issued in this case on July 2, 1973, so as to include additional allegations of Section 8(a)(1) violations as a result of Respondent's attorneys' interrogation of its employees is extraordinary and has no support in Board precedent. Respondent's motion for a protective order, further, is unsupported by any evidence upon which a Judge could base such an order, assuming such an order could be issued.[1/] On the contrary, as will be proved at the hearing in this matter, Respondent's attorneys engaged in systematic, extensive and pervasive interrogation of Respondent's employees as to their union activities, which appeared to be an attempt to poll employees, and which if repeated would clearly warrant amendment of the Complaint.

Likewise, the motion to sever the interrogation allegation from the remainder of this case is extraordinary and should be denied. As alleged in the

1/ The Federal Rules of Civil Procedure, which apply in Board Complaint Proceedings, so far as practical, provide for a Protective Order to limit certain discovery, but nowhere provide for such relief as here requested. See Rule 26(c) F.R.Civ.P. (1970). Moreover, Section 102.15 of the Board's Rules & Regulations, Series 8, as amended, does not inhibit the Regional Director's judgment with respect to the issuance of complaints nor does Section 102.17 so limit his judgment as to what "may be deemed just, prior to the hearing", in amending such complaint.

Complaint, Respondent refused to bargain with the certified bargaining representative in April, 1973. The interrogations of employees occurred over one month later. Thus, basically, this case was a simple refusal to bargain case until the May 21, 1973, interrogations. It is difficult to imaging how systematic interrogation of all employees could aid and assist in the defnnse of a simple refusal to bargain case, if the refusal were based on unlawful grounds. Both actions (along with the later unilateral action taken on May 30, 1973), however, involve conduct that will undermine the union as the bargaining representative of the employees involved. To allow piecemeal litigation of Respondent's unlawful conduct would not only unduly delay the resolution of the issues, it would also destroy the union's effectiveness as bargaining representative. Further, Respondent contends it would like to settle the legality of its interrogation so that it can prepare to "defend" itself. Obviously pretrial preparation within the bounds of propriety is not illegal. On the other hand if Respondent's preparation continues in the future to go beyond the bounds, as it has heretofore, then theoretically the Respondent could have us litigating ad infinitum its defense tactics if severance were allowed.

It is urged that Respondent's motion for a protective order and order for severance and direction of immediate hearing be denied.

Dated at Baltimore, Maryland, this 20th,day of July, 1973.

Respectfully submitted,

Edwin S. Hopson,
Counsel for the General Counsel

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 1973, a copy of the above OPPOSITION TO RESPONDENT'S MOTION FOR A PROTECTIVE ORDER OR ORDER OF SEVERANCE AND DIRECTION OF IMMEDIATE HEARING was served by certified United States mail, return receipt requested, on the following:

Robert Lewis, Esquire
Jackson, Lewis, Schnitzler & Krupman
11 West 42nd Street
New York, New York 10036

Ira H. Lechner, Esquire
3244 Prospect Street, N.W.
Washington, D. C. 20007

Edwin S. Hopson,
Counsel for the General Counsel

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D. C.

HEDA-AARP PHARMACY

and

Case No. 5-CA-6108

METROPOLITAN GUILD OF PHARMACISTS

ORDER ON RESPONDENT'S MOTION FOR A PROTECTIVE ORDER OR ORDER OF SEVERANCE AND DIRECTION OF IMMEDIATE HEARING

On July 17, 1973, counsel for Respondent filed a Motion for a Protective Order or Order of Severance and Direction of Immediate Hearing. The Motion seeks an order enjoining the General Counsel and his agents, including the Regional Director for the Fifth Region, from amending the original complaint to allege further violations of Section 8(a)(1) based on interrogations of Respondent's employees by Respondent's counsel. In the alternative, the Respondent's Motion seeks severance and an immediate separate hearing on the allegations of unlawful interrogation now contained in paragraph 8(b) of the Complaint and pending such hearing and a ruling on the issues raised by such allegation, a stay of further proceedings on the remaining allegations of the Complaint. On July 26, 1973, counsel for the General Counsel filed his Opposition to the Motion. After due consideration of the matter,

IT IS HEREBY ORDERED that the Respondent's Motion be denied. Prior to the opening of the hearing, the Regional Director, acting on behalf of the General Counsel, is vested with exclusive authority to determine the contents of a complaint and any amendments thereto. See Section 102.15 and 102.17 of the Board's Rules and Regulations. See also Section 10(d) of the Act. The requested severance would require piecemeal litigation and unduly delay the resolution of the issues in this proceeding. For this, as well as the additional reasons set forth in the General Counsel's Opposition, I find the requested severance to be unwarranted.

Arthur Leff
Administrative Law Judge

Dated: August 1, 1973
Washington, D. C.

1-D

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

| | | |
|---|---|---|
| RETIRED PERSONS PHARMACY, | : | |
| Respondent, | : | |
| -and- | : | CASE NO. 5-CA-6108 |
| METROPOLITAN GUILD OF PHARMACISTS, | : | |
| Charging Party. | : | |

TO: Executive Secretary
National Labor Relations Board
1717 Pennsylvania Avenue
Washington, D.C.

RESPONDENT'S REQUEST FOR SPECIAL PERMISSION TO APPEAL TO THE NATIONAL LABOR RELATIONS BOARD

Respondent, RETIRED PERSONS PHARMACY, pursuant to Section 102.26 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, hereby request special permission to appeal to the National Labor Relations Board (hereinafter "the Board") from an Order of the Honorable Arthur Leff, A.L.J., dated August 1, 1973, in the above-captioned matter, denying Respondent's July 12, 1973, Motion For A Protective Order Or Of Severance And Direction Of Immediate Hearing (hereinafter "Respondent's Motion").

In support of this Request, Respondent respectfully shows as follows:

1. The facts giving rise to Respondent's Motion are fully set forth in paragraphs 1 through 5 thereof. (A copy of Respondent's Motion, including the Complaint which prompted it, is annexed hereto and made a part hereof as Exhibit A.) summary, Respondent has been cited as violating the Act as a result of the acts of its counsel in interviewing employees concerning a refusal to bargain charge upon which the Complaint was premised.

2. On July 20, 1973, subsequent to Respondent's Motion General Counsel furnished Respondent with a partial Bill of Particulars, annexed hereto as Exhibit B, in which he stated that "all the questions" asked by Respondent's counsel are "tainted with illegality."

3. Pre-trial preparation necessitates further interviewing of Respondent's employees. The trial is scheduled for August 14, 1973. As of this date, Respondent's counsel has refrained from the unual pre-trial preparation of interviewing employees who have facts concerning issues raised in the Complaint. Counsel has refrained from doing so for fear that General Counsel will further amend the Complaint to allege additional charges against Respondent relating to employee interviewing. _/

4. General Counsel's allegation that the interviewing of employees was unlawful has a chilling effect upon both Respondent and its counsel. If counsel cannot undertake to effectively represent its client without risking an amended Complaint alleging additional violations, its efforts will be unduly inhibited and its professional responsibilities compromised.

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_/ That this fear is justified is further shown by General Counsel's letter of August 1, 1973 (annexed hereto as Exhibit C), announcing his intention to amend the Complaint at the hearing.

In this connection, attention is called to NLRB v. Guild Industries Mfg. Corp., 321 F. 2d 108, 53 LRRM 2746 (1963), in which the Court of Appeals for the Fifth Circuit stated:

> "The right to counsel before an administrative agency such as the Labor Board no less than before the courts is a precious right and one to be preserved and given effect. To charge counsel as here, and put him on trial as a respondent along with the employer is tantamount to a restraint, intimidatory and coercive in nature."

This "restraint, intimidatory and coercive in nature," is no less subtle because it is exercised against one who is named as an agent of the Respondent rather than as Respondent itself.

5. As alternative relief under its Motion, Respondent requested severance of the issue of counsel's conduct and a direction for an early trial. As precedent for such relief, the Board may consider the procedure of the United States District Courts. There, the practice of bifurcation of proceedings is well established and has been incorporated into the Federal Rules of Civil Procedure. F.R.C.P. Rule 42 (b) ("Separate Trials") provides in part:

> The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial...of any separate issue..." /

Here, an early trial of the issue of the propriety of counsel's interviewing, possibly on stipulated facts, would avoid prejudice to Respondent in defending against other issues at the trial in chief. It would also serve to limit the evidence at the later trial by defining the issues raised by Respondent's affirmative defenses to the Complaint. See 5 Moore's Federal Practice ¶42.03 (2d ed. 1971). The Board's Rules and Regulations indicate such a procedure and give wide latitude to accomplish this purpose.

/ Cf. NLRB Rules & Regulations, Section 102.33.

WHEREFORE, for all of the foregoing reasons, Respondent prays that its Request for Special Permission to Appeal To The National Labor Relations Board be granted.

Respectfully submitted,

JACKSON, LEWIS, SCHNITZLER & KRUPMAN
11 West 42nd Street
New York, New York 10036
Telephone: (212) 947-2000

BY: Robert Lewis
ROBERT LEWIS

DATED: August 6, 1973
New York, New York

Copies have been served this day on the following counsel at the addresses below:

William C. Humphrey, Esq.
Regional Director, Fifth Region
National Labor Relations Board
1019 Federal Building, Charles Center
Baltimore, Maryland 21201

Ira M. Lechner, Esq.
3244 Prospect Street, N.W.
Washington, D.C. 20007

Peter G. Nash, Esq.
General Counsel
National Labor Relations Board
1717 Pennsylvania Avenue, N.W.
Washington, D.C. 20570

Arthur Leff
Administrative Law Judge
National Labor Relations Board
1717 Pennsylvania Avenue, N.W.
Washington, D.C. 20570

G. Harrison Darby

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

MRTA-AARP PHARMACY

and

METROPOLITAN GUILD OF PHARMACISTS

Case No. 5-CA-6108

OPPOSITION TO RESPONDENT'S REQUEST FOR SPECIAL PERMISSION TO APPEAL TO THE NATIONAL LABOR RELATIONS BOARD

Comes now the undersigned Counsel for the General Counsel and opposes Respondent's Request for Special Permission to Appeal to the National Labor Relations Board. Attached hereto and made a part hereof is the General Counsel's Opposition to Respondent's Motion for a Protective Order or Order of Severance and Direction of Immediate Hearing. Since Respondent's request herein raises the same issues and arguments previously presented to the Chief Administrative Law Judge, a repetition herein would be superfluous. A few added comments regarding Respondent's Request are in order.

In paragraph 4 of Respondent's Request for Special Permission to Appeal to the National Labor Relations Board, counsel for Respondent acknowledges what can be considered the key distinguishing feature of the Court of Appeals decision in the Guild Industries case,[1] namely that there, Respondent's attorney was named as a respondent before the Board. Counsel for Respondent then asserts that "/t/his 'restraint, intimidatory and coercive in nature,' is no less subtle because it is exercised against one who is named as an agent of the Respondent rather than as Respondent itself." As pointed out heretofore, Respondent is asking for pre-trial relief based on its view of the merits of a part of the case. Secondly, Respondent's counsel were not named in the complaint in this matter, and it was only at Respondent's request that any of Respondent's counsel were named in a Partial Bill of Particulars filed by the undersigned.

Finally, counsel for Respondent asserts, in a footnote in their Request, that further proof of the necessity for the relief sought is a letter

1/ N.L.R.B. v. Guild Industries Manufacturing Corp., 321 F. 2d 108, (C.A. 5, 1963).

dated August 1, 1973, addressed to one of Respondent's counsel from the undersigned advising of an intention to amend the complaint at hearing in certain respects. As the undersigned communicated to Attorney Peggy L. Braden (who's been involved in Respondent's defense of this matter, and is an associate of Attorney Robert Lewis who filed the Request), the purpose of the amendment is to be certain that all the questions contained in the questionnaire utilized in the alleged unlawful interrogations on May 21, 1973, were encompassed, as intended, in the pleadings. Certainly any other interpretation, including one that such an intended amendment suited the purposes of Respondent's extraordinary requests herein, would be patently erroneous.

It is, therefore, requested that Respondent's Request for Special Permission to Appeal to the National Labor Relations Board be denied, and should same be granted, that the appeal be denied.

Dated at Baltimore, Maryland, this 9th day of August, 1973.

Respectfully submitted,

EDWIN S. HOPSON

Edwin S. Hopson
Counsel for the General Counsel

CERTIFICATE OF SERVICE

I hereby certify that on August 8, 1973, a copy of the Opposition to Respondent's Request for Special Permission to Appeal to the National Labor Relations Board was served by certified United States mail, return receipt requested, on the following:

Robert Lewis, Esquire
Jackson, Lewis, Schnitzler & Krupman
11 West 42nd Street
New York, New York 10036

Ira M. Lechner, Esquire
3244 Prospect Street, N. W.
Washington, D. C. 20007

EDWIN S. HOPSON

Edwin S. Hopson
Counsel for the General Counsel
National Labor Relations Board, Region 5
1019 Federal Building, Charles Center
Baltimore, Maryland 21201

Re: RETIRED PERSONS PHARMACY, t/a
MeTA-AARP PHARMACY
Case No. 5-CA-6108

STIPULATIONS OF FACT

1. Since on or about April 19, 1973, and at all times thereafter, Respondent has refused, and is refusing, to meet and bargain with the Guild.

2. The total number of said unit employees approached and read the "Statement Made by Attorney to Employees" and questions, both of which documents are marked as G.C. Ex. No. 11(a)-(c) on May 21, 1973, was 27, with the number of unit employees who actually answered most or all of said questions being 16.

3. On or about May 30, 1973, Respondent, without notice to and bargaining with the Guild, unilaterally reduced the work week of said unit employees from 42½ hours to 40 hours.

4. On or about April 20, 1973, Respondent filed a representation petition in Case No. 5-RM-749, which petition was dismissed on May 2, 1973, by the Regional Director for the Fifth Region as untimely filed. No appeal of said dismissal was taken.

G.C. #3

FORM NLRB 760
(1-64)

# UNITED STATES OF AMERICA
# NATIONAL LABOR RELATIONS BOARD

| | |
|---|---|
| TRIA-AARP PHARMACY<br>Employer<br>and<br>METROPOLITAN GUILD OF PHARMACISTS<br>Petitioner | Case No. 5-RC-7782<br>Date issued November 18, 1971<br>Type of Election: (Check one):<br>☐ Consent Agreement<br>☒ Stipulation<br>☐ Board Direction<br>☐ RD Direction<br>(If applicable check either or both):<br>☐ 8(b)(7)<br>☐ Mail Ballot |

## TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

| | |
|---|---|
| 1. Approximate number of eligible voters | 34 |
| 2. Void ballots | 0 |
| 3. Votes cast for PETITIONER | 20 |
| [redacted] | — |
| [redacted] | — |
| 6. Votes cast against participating labor organization[s] | 10 |
| 7. Valid votes counted (sum of 3, 4, 5, and 6) | 30 |
| 8. Challenged ballots | 4 |
| 9. Valid votes counted plus challenged ballots (sum of 7 and 8) | 34 |
| 10. Challenges are (not) sufficient in number to affect the results of the election. | |

11. A majority of the valid votes counted plus challenged ballots (Item 9) has (not) been cast for:
PETITIONER

For the Regional Director - Region 5

H. Quinn Chesson

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

| | |
|---|---|
| For EMPLOYER<br>Thomas A. Schweitzer | For PETITIONER<br>Ira M. Kaplan |
| For | For |

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971—478 327

G.C. # 5

FORM NLRB-4279 (2-64)

RC-RM-RD

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

| | TYPE OF ELECTION (Check one) | (Also check box below where appropriate) |
|---|---|---|
| AREA-AARP PHARMACY<br>Employer<br>and<br>METROPOLITAN GUILD OF PHARMACISTS<br>Petitioner | ☐ Consent Agreement<br>☒ Stipulation<br>☐ Board Direction<br>☐ RD Direction<br>Case No. 5-RC-7782 | ☐ 8(b)(7) |

## CERTIFICATION OF REPRESENTATIVE

An election having been conducted in the above matter under the supervision of the Regional Director of the National Labor Relations Board in accordance with the Rules and Regulations of the Board; and it appearing from the Tally of Ballots that a collective bargaining representative has been selected; and no objections having been filed to the Tally of Ballots furnished to the parties, or to the conduct of the election, within the time provided therefor;

Pursuant to authority vested in the undersigned by the National Labor Relations Board, IT IS HEREBY CERTIFIED that METROPOLITAN GUILD OF PHARMACISTS

has been designated and selected by a majority of the employees of the above-named Employer, in the unit described below, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act as amended, the said organization is the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

UNIT: All registered and/or graduate pharmacists employed by the Employer at its Washington, D.C. location, but excluding office clerical employees, all other employees, guards and supervisors as defined in the Act.

Signed at Baltimore, Maryland
On the 29th day of November, 19 71

On behalf of
NATIONAL LABOR RELATIONS BOARD

Regional Director, Region 5
National Labor Relations Board

GPO 869-205

G.C. # 4(a)

METROPOLITAN GUILD OF PHARMACISTS

NRTA AND AARP PHARMACY

AGREEMENT

This Agreement, made and entered into this 1st day of Sept 1972, between NRTA and AARP Pharmacy (hereinafter referred to as the Employer) and the Metropolitan Guild of Pharmacists (hereinafter referred to as the Guild).

ARTICLE I

RECOGNITION

The Employer recognizes the Guild as the exclusive bargaining agent for all registered and/or graduate pharmacists employed by the Employer at 1224 24th Street, N.W., Washington, D.C., but excluding office clerical employees, all other employees, guards and supervisors as defined in the Act, as expressly certified by the National Labor Relations Board in Case No. 5-RC-7782, on November 29, 1971. When the word employee is used hereafter, it means only those employees in the unit stated above.

ARTICLE II

MAINTENANCE OF MEMBERSHIP

Guild membership is an individual voluntary decision. Any employee may choose to become a Guild member or may choose not to. Should an employee choose to become a member, he shall, as a condition of employment, remain a member for the duration of the Agreement, except that he may withdraw from membership during the last thirty (30) days before the expiration date of this Agreement. A withdrawal from membership shall be effected in writing addressed to the Guild, with a copy retained by the employee.

An employee shall be deemed a Guild member within the meaning of this clause, only under the following circumstances:

G.C. #6

1. He executed and dated an application for membership subsequent to the effective date of this Agreement.

2. The application referred to in paragraph 1 is approved by the Guild's Executive Board.

3. All employees covered by this Agreement shall be advised of the provisions of this Article by the Company.

## ARTICLE III

## WAGES

1. Effective on the effective date of this Agreement, the minimum hiring rate for a pharmacist shall be $7.00 per hour. All employees on the payroll as of the effective date of this Agreement shall receive a 40¢ per hour increase.

2. On the anniversary date of his employment, during the first five (5) years of such employment, each employee shall receive a ten cent (10¢) per hour increase.

3. The parties agree that the rate of all employees on the payroll as of the effective date of this Agreement shall be increased by twenty-eight (28¢) cents per hour in lieu of a year-end Christmas gift.

4. (a) The commission rate for pharmacists shall be ten cents (10¢) for each prescription filled above 140 per day.

(b) It is understood that the minimum daily production for all employees will be 175 prescriptions, if available. Any employee producing less than the minimum for three (3) consecutive days or showing a pattern of reduced production below this minimum shall be subject to dismissal, after prior discussion with the employee. The designated Guild representative on the premises may be present at this discussion if the employee so desires. This provision shall become effective July 1, 1972.

(c) The Employer will continue the current commission for the walk-in pharmacist and liquids and compounding pharmacist, to whom the 175 minimum does not apply.

## ARTICLE IV

## HOURS OF WORK

1. The Company agrees that it will allow current full-time pharmacists an opportunity to work at least forty-two and one-half (42-1/2) hours per week. The recitation of this number of hours per week does not and shall not imply any guarantee of a forty-two and one-half (42-1/2) hour work week. This recitation will not restrict the Company from hiring new employees on a forty (40) hour work week basis.

2. Work performed in excess of forty (40) hours will be compensated for at the rate of time and one-half of the employee's straight-time rate of pay. The recitation of this measure of pay does not and shall not imply any guarantee of any overtime work.

3. The normal workweek will be five (5) days.

4. The Company agrees not to schedule split shifts.

5. The meal period shall be one-half (1/2) hour and shall be assigned by the Employer, if practicable, approximately near the middle of the employee's shift. Meal periods are not paid for by the Employer. On paydays, the meal period shall be one (1) hour and the Employer will compensate the employee for one-half (1/2) hour of this time.

6. Employees shall receive rest periods as heretofore, consisting of fifteen (15) minutes in the morning and fifteen (15) minutes in the afternoon.

## ARTICLE V

## VACATIONS

All regular employees covered by this Agreement shall receive the following annual vacations:

1. All such employees who have completed one (1) year of continuous service shall receive two (2) weeks' paid vacation.

2. All such employees who have completed five (5) years of continuous service shall receive three (3) weeks' paid vacation.

3. All such employees who have completed fifteen (15) or more years of continuous service shall receive four (4) weeks' paid vacation.

To be eligible for full paid vacation, an employee must work in forty-eight (48) calendar weeks, which includes his earned vacation period, during the anniversary year in which he earns his vacation. An employee must work a minimum of six (6) months to be eligible for vacation. Vacation will be pro-rated for employees who work at least six (6) months but less than one (1) year.

Vacation pay for each week of paid vacation will consist of the employee's normal work week pay at straight time.

Employees may request to use their earned vacation in daily increments. Vacation scheduling will be at the complete discretion of the Employer. For each approved holiday which occurs during the vacation period, an extra day will be added to the vacation.

The Company will schedule vacations according to operating needs. Pharmacists shall be required to state their preferences for a vacation time prior to May 1 of each calendar year on an appropriate form supplied by the Company. Failure to state such preference prior to May 1 shall deny preferential treatment based on seniority. When there is a conflict between two or more employees, all of whom cannot be accommodated, the pharmacist or pharmacists with the most seniority will be given their preference. However, the Employer retains the right to determine the number of employees who will be absent due to vacation at any one time.

Unused vacation days will not be compensated for unless unused by the scheduling of the Employer.

An employee may request an extra vacation without pay; however, the granting of such a vacation will be at the complete discretion of the Employer.

## ARTICLE VI

## HOLIDAYS

The Employer agrees to grant to all regular employees the following holidays with pay: New Year's Day, Martin Luther King's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Christmas Day. To be eligible for holiday pay, the employee must work the full day before and after the holiday, unless the absence is approved by the Employer.

If a holiday falls on a Sunday, it will be observed on Monday. If a holiday falls on Saturday, it will be observed on Friday.

If an employee works on a holiday named above, he shall receive pay for those hours worked, plus one full day's pay at straight time.

Holiday pay shall be counted as hours worked for the purpose of computing overtime pay.

## ARTICLE VII

## SENIORITY RIGHTS

1. Seniority shall be the continuous length of service of the employee with the Employer and shall be on a bargaining unit-wide basis.

2. Seniority shall be broken if the employee quits; is duly discharged; takes a leave of absence in excess of six (6) months; or fails to return to work within one week of the end of a Company-approved leave of absence. This clause shall not apply to absences due to illness.

3. The necessity for layoffs or reduction of staff shall be at the discretion of the Employer. In the case of layoffs of of regular employees occasioned by reduction in force, or such employee's recall from layoffs, length of service will be considered, along with ability, and all things being equal, seniority will apply.

4. All employees shall be hired on a probationary basis of seventy-five (75) calendar days. During this time an employee may be discharged without notice, with or without cause and without reference to any grievance or arbitration provisions of this Agreement. In addition, the terms of this Agreement concerning layoffs and seniority rights shall not apply to any new employee until after seventy-five (75) days of regular employment. All other terms and provisions of this Agreement shall apply to any new regular employee as of the date of regular employment except as herein provided. After the seventy-five (75) days probationary period, the employee will be credited with seniority as of his date of regular employment.

## ARTICLE VIII

## SEVERANCE PAY

An employee who voluntarily resigns or is terminated for other than just cause shall be entitled to payment for any accrued unused vacation, and severance pay in accord with the following schedule:

| | | |
|---|---|---|
| Less than 6 months' service | - | none |
| 6 months' to 1 year's service | - | one week |
| 1-5 years' service | - | two weeks |
| More than 5 years' service | - | to be arranged with the Employer |

## ARTICLE IX

## GRIEVANCE AND ARBITRATION PROCEDURE

Section 1. A grievance or dispute arising out of the application or meaning of the terms of this Agreement during the term of this Agreement shall be taken up in the following manner: No grievance or complaint or contest by an employee of a discharge or disciplinary action shall be brought up or considered unless

brought up in the first step not later than fifteen (15) working days after the date of the discharge or the date of the grievance or complaint.

Step 1. The matter may be brought up by the employee to the Pharmacy Manager either with or without a Guild representative.

Step 2. If not settled, then no later than five (5) working days after Step 1, the matter shall be taken up by a representative designated by the Guild and a representative of management.

Step 3. If the grievance is not settled satisfactorily in Step 2, then within fifteen (15) calendar days after receipt of the Company's answer in Step 2, the Guild will have the right to request arbitration of the grievance provided arbitration thereof is not precluded by this Agreement. Such request must be made, in writing, by the fifteenth day, or the grievance will be deemed to have been resolved on the basis of the Company's last answer and will not be arbitrable. It is further understood and agreed that a decision of the Guild not to exercise its right to request arbitration shall be final and binding upon the members of the bargaining unit, and further that the Guild, through its designated representatives, has authority to settle any grievance at any stage.

Section 2. Either party may file a grievance and such will commence at Step 2, but the Employer shall not have the right to request arbitration.

Section 3. The parties will first attempt to agree on an arbitrator. If they cannot agree, the Guild may submit the grievance to the American Arbitration Association, and the arbitrator will be selected pursuant to that Association's procedures. American Arbitration Association Rule 27, providing for the holding of hearing in the absence of a party, shall not apply where the defaulting party fails to appear for the reason that he asserts that the grievance is not arbitrable.

Section 4. The decision of the Arbitrator will be final and binding on all parties, and the cost of the Arbitrator shall be borne equally by the Company and the Guild. The Arbitrator shall have no authority to alter, amend, add to, subtract from or otherwise change the terms and conditions of this Agreement. Only one grievance shall be submitted to the Arbitrator unless the parties mutually agree otherwise.

## ARTICLE X

## LEAVES OF ABSENCE

A. Paid Sick And/Or Personal Leave

All regular full-time employees, who have passed their probationary period, shall be credited with a bank of fifty-one (51) hours to be used for sick and/or personal leave. This time must be used in periods of at least one (1) hour.

The year, for sick and/or personal leave purposes only, begins July 1 and ends June 30. At the discretion of the Employer, sick leave may be advanced.

Sick or personal leave may not be accumulated from year to year. Employees will be paid for unused sick or personal leave hours.

B. Maternity Leave 41a

All female employees, who have completed their probationary period, are eligible for maternity leave for a period of six (6) months without loss of seniority. Such leave must be requested from the Personnel Office, in writing, at least two (2) weeks in advance.

Normally, an employee will be permitted to work during pregnancy up to the sixth (6th) month. The Employer will require a doctor's certificate stating the ability of the employee to work during pregnancy. If the employee desires to continue working beyond the sixth (6th) month, she must make written application to the Personnel Office and must submit a letter from her attending physician giving the expected date of birth and stating that her physical health will not be endangered by her continuing to work. Permission to work beyond the sixth (6th) month will be granted at the reasonable discretion of the Employer.

If an employee requires a maternity leave longer than six (6) months, such a leave may be requested and will be treated as an unpaid voluntary leave in accord with the provisions set forth in Section D below.

The employee shall notify the Personnel Office, in writing, at least two (2) weeks prior to her intended return date, of her readiness to return to work. The Employer reserves the right to request a doctor's certificate of proof of ability to return to duties. Failure to notify the Personnel Office of intention to return prior to the expiration of the maternity leave will be treated as a voluntary resignation.

C. Military Leave

The Employer shall abide by federal law with regard to the granting of military leaves of absence for employees entering or enlisting into the military service of the United States.

An employee who has completed one (1) year of service with the Employer, and who is called for field training as a member of any Armed Forces or National Guard reserve unit, will be entitled to receive the difference between his (or her) military pay and the regular salary of the employee for a period not to exceed two (2) weeks.

Payment will be made after presentation to the payroll department of proof of the amount received as military pay for the two (2) week assignment.

An employee who requires a military leave of absence for reserve training must notify the Personnel Department and his (or her) supervisor, in writing, at least two (2) weeks in advance, unless the emergency nature of the leave makes such advance notice impossible.

D. Unpaid Voluntary Leave Of Absence

All regular full-time employees who have completed their probationary period may apply for a leave of absence without pay, which shall be granted or denied at the Employer's sole discretion.

Any request for a leave of absence must be made, in writing, to the employee's supervisor and to the Personnel Office at least two (2) weeks in advance unless the emergency nature of the leave makes such advance notice impossible. In such case, the request must be made in writing as soon as possible prior to the proposed leave date.

A leave of absence in excess of six (6) months shall cause the employee to lose his (her) seniority rights.

All earned vacation must be used prior to the commencement of the leave of absence.

Failure to return to work within one week of the end of an approved leave of absence will be treated as a voluntary resignation.

An unpaid leave of absence for six (6) months will be granted to an employee who becomes a full-time officer of the Guild upon his written application to the Personnel Office.

All employee benefits will be suspended during a leave of absence unless the employee arranges with the payroll department to maintain the benefits on his/her own.

E. Bereavement Leave

In the event of the death of a member of the immediate family, all regular full-time employees will be granted up to three (3) calendar days leave of absence with pay if he actually attends the funeral, but in no event shall such leave extend longer than one day after the funeral. The term "immediate family" shall mean the wife, husband, child, mother, father, brother, sister, mother-in-law or father-in-law of the employee.

In the event of the death of a grandparent of the employee, all regular full-time employees will be granted a one (1) day leave of absence with pay to attend the funeral.

## ARTICLE XI

## JURY DUTY

All regular full-time employees, who have passed their probationary period, who serve on jury duty during their regularly scheduled working hours, shall, upon presentation of a certificate from an appropriate court official, stating the number of days served on the jury and the amount received in jury fees, be paid the difference between their regular base wage rate and the amount received as jury pay.

It is understood that employees will report for work on any day or part of a day when not actually required in court, whether this time is before or after such attendance.

Such pay for lost time shall not exceed thirty (30) days in a calendar year.

## ARTICLE XII

## INSURANCE

The Employer will continue its existing insurance program, and the existing premium arrangement. Booklets explaining these benefits will be furnished to each employee.

The Employer will continue to maintain its professional liability insurance in an amount at least equal to that recommended by the American Pharmaceutical Association.

## ARTICLE XIII

## PROFESSIONAL ETHICS COMMITTEE

The Company and the Guild shall establish a Professional Ethics Committee composed of four (4) representatives of the Guild. The Committee shall meet with Company representatives from time to time to discuss prescription policy and professional problems.

## ARTICLE XIV

## MANAGEMENT RIGHTS

Subject to the limitations of this Agreement, the management of the business and the direction of the working force remains an exclusive management function. The right of management includes, but is not limited to, such functions as the right to plan, schedule, direct and control operations; designate hours of work; the right to designate the number of employees required to man the operation; the right to introduce new methods, facilities and procedures; the right to discontinue present locations; the right to maintain or establish new or improved rules and regulations covering the store's operations, and in particular, the pharmacists therein; the right to hire, promote, assign and transfer employees; and assign overtime, to lay off employees because of lack of work; and the right to suspend, discharge, or otherwise discipline employees for proper cause. The Company shall have the exclusive right to determine the source or sources from which applicants for work shall be secured, and shall be the sole judge of requirements and qualifications for employment.

## ARTICLE XV

## NO STRIKE CLAUSE

1. During the life of this Agreement or any written extension hereof, the Guild, on behalf of its officers, agents and members agrees that so long as this Agreement or any written extension hereof is in effect, there shall be no strikes (economic, unfair labor practice, or otherwise), slowdowns, walkouts, sit-downs, picketing, boycotts or any activities which interfere, directly or indirectly, with the Company's operations or the sale of its products for any reason.

2. Any employee who violates this provision shall be subject to disciplinary action, including discharge.

3. In the event of a strike in violation of this provision, the Company shall have the right to permanently replace any employee on strike. In the event an employee is continued in employment after the termination of a strike in violation of this provision, he shall not be entitled to any fringe benefits contained in this Agreement nor any accrual thereof during the period of such strike, nor shall he, for the duration of the strike, accumulate seniority or length of service for any purpose under this Agreement.

4. Any claim or suit for damages resulting from the Guild's violation of this Article shall not be subject to the arbitration provision of this Agreement.

5. In the event of violation of this Article by the Guild, the Company has the option to rescind this entire Agreement or any part thereof.

## ARTICLE XVI

## LEGAL PROCEEDINGS

Employees covered by this Agreement, who are compelled by legal process to testify in legal proceedings arising out of or involving their professional employment with the Employer,

will be paid for time lost from their work schedule in complying with the legal process.

## ARTICLE XVII

## VISITATION

A representative of the Guild may visit the Employer's premises for the purpose of observing working conditions and to see that this Agreement is being complied with. Such a visit will be upon reasonable notice and by appointment with the employer. Upon his arrival at the premises, the Guild representative will present himself to the Pharmacy Manager and the representative shall confine himself to the work area of the employees in the unit. During the visit, the Guild representative shall not interrupt the work of any pharmacists.

## ARTICLE XVIII

## INVALIDATION

Should any Article, section or portion thereof, of this Agreement be held unlawful and unenforceable by any court of competent jurisdiction, such decision of the court shall apply only to the specific Article, section or portion thereof directly specified in the decision, provided, however, that upon such a decision the parties agree immediately to negotiate a substitute for the invalidated Article, section or portion thereof.

## ARTICLE XIX

## DURATION OF AGREEMENT

This Agreement shall be in full force and effect from May 29, 1972 until May 29, 1973 and may be terminated by either party giving to the other written notice by registered mail of its intention to terminate the same at least sixty (60) days prior to its expiration date.

In default of such notice, the Agreement shall continue in full force and effect upon the same terms and conditions for

a further period of one year from the date of the term herein provided, and so on from year to year thereafter, until terminated by either party giving to the other notice as aforesaid. The post office registry receipt shall be the only evidence of the mailing of such notice.

In Witness Whereof, each party has caused this Agreement to be executed by the hand of its proper officer or officers this 1st day of ~~July~~ SEPT, 1972.

FOR THE EMPLOYER: [signature]
Manager

FOR THE GUILD: [signature]

[signature]

[signature]

Executed this 1st day of ~~July~~ SEPT, 1972.

[signature]
Witness

March 7, 1973

Robert Lewis, Esq.
11 West 42nd Street
New York, New York 10036

Re: NRTA and AARP Pharmacy and the
Metropolitan Guild of Pharmacists

Dear Bob:

Pursuant to the collective bargaining agreement currently in force between the above-entitled parties, the Metropolitan Guild of Pharmacists hereby gives the Company notice of its intention to terminate the said Agreement on its expiration date and its intention to modify the agreement the contract as a result of collective bargaining between the parties.

The Guild hereby offers to meet and confer with the Company for the purpose of negotiating a new contract or a contract containing modifications.

Please get in touch with me for the purpose of setting up a mutually acceptable time and place for negotiations. I hope you are well and I look foward to seeing you.

Sincerely,

Ira M. Lechner
Attorney for the Metropolitan
Guild of Pharmacists

imL:pp

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May 2, 1973

Re: Retired Persons Pharmacy
Case No. 3-RM-749

Peggy Lee Braden, Atty. at Law
c/o Jackson, Lewis, Schnitzler & Krupman
11 East 42nd Street
New York, New York 10036

Dear Ms Braden:

The above-captioned case petitioning for an investigation and certification of representatives under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

As a result of the investigation it appears that further proceedings are not warranted at this time as the petition was filed during the "insulated period" of an existing contract, namely, within 60 days prior to the contracts' May 19, 1973 expiration date. Accordingly, I am dismissing the petition in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing an appeal with the National Labor Relations Board, Washington, D. C, 20570. A copy of such appeal must be served upon each of the other parties to the proceeding, including the undersigned. This appeal must contain a complete statement setting forth the facts and reasons upon which it is based. The appeal (3 copies) should be filed with the Board in Washington, D. C. by the close of business on May 15, 1973. Upon good cause shown, however, the Board may grant special permission for a longer period within which to file. A copy of any such request for extension of time should be submitted to me and to the other parties to the proceeding. The appeal and the request for extension of time must include a statement that a copy has been served on me and on each of the other parties to this proceeding in the same or

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similar manner as that utilized in filing the request with the Board.

Very truly yours,

William C. Humphrey
Regional Director

Certified Mail
Return Receipt Requested

cc: National Labor Relations Board, Washington, D. C. 20570
Retired Persons Pharmacy, 1224-24th Street, N. W., Washington, D. C. 20037
Ira M. Kochner, Esq., 3244 Prospect Street, N. W., Washington, D. C. 20007

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Form Approved
Budget Bureau No. 64-R

# PETITION

DO NOT WRITE IN THIS SPACE
CASE NO.
DATE FILED 4/19/73

INSTRUCTIONS—Submit an original and four (4) copies of this Petition to the NLRB Regional Director for the Region in which the employer concerned is located. No notarization is required but any one item, attach additional sheets, numbering item accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

1. Purpose of this Petition (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.)

- ☐ RC-CERTIFICATION OF REPRESENTATIVE—A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- ☐ RM-REPRESENTATION (EMPLOYER PETITION)—One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- ☐ RD-DECERTIFICATION—A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- ☐ UD-WITHDRAWAL OF UNION SHOP AUTHORITY—Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- ☐ UC-UNIT CLARIFICATION—A labor organization is currently recognized by employer, but petitioner seeks clarification of placement of certain employees. (Check one) ☐ In unit not previously certified ☐ In unit previously certified in Case No. _____
- ☐ AC-AMENDMENT OF CERTIFICATION—Petitioner seeks amendment of certification issued in Case No. _____
  Attach statement describing the specific amendment sought.

2. Name of Employer: Retired Persons Pharmacy
   Employer Representative to Contact: Robert C. Altmann (202 [illegible])
3. Address of Establishment(s) involved (Street and number, city, state, and ZIP Code): 1224 - 24th Street, N.W. Washington, D. C. 20037
4a. Type of Establishment (Factory, mine, wholesaler, etc.): Mail Order Pharmacy
   4b. Identify Principal Product or Service: Pharmaceutical goods
5. Unit involved (In C cases, describe PRESENT bargaining unit and attach description of proposed clarification.):

All registered and/or graduate pharmacists

Office clerical employees, guards, supervisors, and all other employees.

6a. Number of Employees in Unit: Present Appx. 23; Proposed (by UC/AC)
6b. Is this Petition supported by 30% or more of the employees in the unit? ☐ Yes ☐ No (Not applicable in RM, UC, and AC)

(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable.)

7a. ☐ Request for recognition as Bargaining Representative was made on (Month, day, year) and employer declined recognition on or about (Month, day, year). (If no reply received, so state)

7b. ☐ Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8. Name of Recognized or Certified Bargaining Agent (If there is none, so state.)
   Affiliation:
   Metropolitan Guild of Pharmacists
   Address: 8630 Hamilton Avenue, Silver Spring, Maryland
   Date of Recognition or Certification: November 29, 1971
9. Date of Expiration of Current Contract, if Any (Show month, day, and year): May 29, 1973
   10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop. (Month, day, and year)
11a. Is There Now a Strike or Picketing at the Employer's Establishment Involved? Yes ☐ No X
   11b. If So, Approximately How Many Employees Are Participating?
11c. The Employer Has Been Picketed by or on Behalf of (Insert name) a Labor Organization, of (Insert address) Since (Month, day, year)

12. Other Organizations or Individuals Other Than Petitioner (and Other Than Those Named in Items 8 and 11c) Which Have Claimed Recognition as Representatives and Other Organizations and Individuals Known to Have a Representative Interest in Any Employees in the Unit Described in Item 5 above. (If none, so state.)

| Name | Affiliation | Address | Date of Claim (Required only if Petition is filed by Employer) |
|---|---|---|---|
| NONE | | | |

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

Sol. Lewis Schmeidler & Krupin
(Name of representative or person filing petition)
By [signature] (Title, if any) Attorney for Petitioner
1629 K Street, N.W. Washington, D.C. 20006 (Address and telephone number) 202-347-2000

WILLFULLY FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001).

EC's #92

SELECTED RESPONDENT EXHIBITS

IN NLRB CASE NO. 5-CA-6108

RETIRED PERSONS PHARMACY

# NRTA-AARP PHARMACY

March 14, 1973

NATIONAL RETIRED TEACHERS ASSOCIATION/AMERICAN ASSOCIATION OF RETIRED PERSONS

Dear:

Article II, paragraph 3, of the agreement with the Metropolitan Guild of Pharmacists provides that we must advise you of the provisions of the maintenance of membership clause.

The clause states that Guild membership is an individual voluntary decision. We have never believed and still do not believe in compulsory union membership. Some of our pharmacists did choose to become a member of the union in order to judge for themselves what it means to be a union member.

For those pharmacists who did become union members, the agreement provides that they have the right to withdraw from membership during the last thirty (30) days before the expiration of the agreement. The agreement expires on May 29.

If you desire to withdraw your membership in the union, you may do so by writing a letter to the offices of the union, located at 110 Hamilton Avenue, Silver Spring, Maryland, between April 29 and May 29. A copy of the letter should be retained by you.

There is no penalty which can be imposed on pharmacists who desire to withdraw from union membership. It is entirely up to you.

Very truly yours,

Robert Altmann

(copy)

September 22, 1973

Mr. John A. Penello
Regional Director
National Labor Relations Board
1019 Federal Building
Charles Center
Baltimore, Maryland 21201

Re: NRTA-AARP Pharmacy
Case No. 5-RC-7782

Dear Penello:

Per your memo of September 17, please find attached a listing of our 34 pharmacists, and their home addresses.

Sincerely yours,

Robert C. Altmann
Manager

(copy)

# [illegible]

[illegible]

[illegible] NATIONAL RETIRED TEACHERS ASSOCIATION & AMERICAN ASSOCIATION OF RETIRED [illegible]

[illegible] RO R AVELLA
822 N Garfield St.
Arlington VA

[illegible]ALVIN A BARON
436 East Gate Dr.
Silver Spring, Md.

[illegible]ON E BEASLEY
[illegible] Linden Lane
[illegible]ville, Md. 20715

[illegible]E E BOUCHARD
[illegible] Independence Ave. S.E.
[illegible]ington, D.C.

[illegible] S COOPER
[illegible] Geneva St.
[illegible]

[illegible]. P CARROLL
[illegible] Village Court
Silver Spring, MD.

[illegible]LD M CHATLIN
[illegible] Rutland PI
[illegible], Md.

[illegible]ORGE A DAVIS
[illegible]27 Newport Mill Road
Kensington, Md.

GEORGE M DOWNARD
4305 Laurel Rd.
Alexandria, Va.

[illegible]ES D DOYLE
[illegible] Bligh St.
[illegible]ver Spring, Md.

[illegible] M EDWARDS
[illegible] North Capitol St. NE
[illegible]ington, D.C.

[illegible]. I EISENBERG
[illegible] N. Hampshire Ave. NW
[illegible]ington, D.C.

MORRIS J EISMAN
4417 Fessenden St. NW
Washington, D.C.

PETER GAROFALO
2445 Lyttonsville Rd.
Silver Spring, Md.

ROBERT C GILTIN
4802 Broadbrook Ct.
Bethesda, Md.

BENJAMIN GOLDMAN
[illegible]701 Williamsburg #404
Chevy Chase, Md. 20015

PAUL C JOHNSON
[illegible]701 Williamsburg, #1510
Chevy Chase, Md. 20015

[illegible]E D KIVETT
[illegible]710 Colshire Dr.
McLean, Va. 22101

MARVIN LEVY
3003 Van Ness St. NW
Washington, D.C.

CONSTANCE E LEWIS
4419 19th PLACE NE
Washington, D.C.

JOHN V MESZAROS
1912 C St. NW
Washington, D.C.

ALVIN MILLER
11115 Norlee Drive
Silver Spring, Md.

CHARLIE I NIX, JR.
5153 8th St. NW
Washington, D.C.

HERMAN NORMAN
Van Ness East 1007
2939 Van Ness [illegible]
Washington [illegible]

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# [redacted] PHARMACY

[redacted]

GEORGE A RICHARDSON
3902 14th St., NW
Washington, D.C.

GERALD M ROSENFELD
11219 Nebel Dr.
[redacted], MD. 20853

[redacted]
6104 [redacted] St., NW
Washington, D.C.

GEORGE J SKALSKI
261 [redacted] St., SE
[redacted], D.C.

[redacted] SMITH
[redacted] Dr.
[redacted], MD

EUGENE E TURNER
1400 South Joyce St.
Arlington, Va.

[redacted] WOLF
3502 [redacted] Road
[redacted], MD.

[redacted] WOOTEN
[redacted] Dr.
[redacted], Md.

PAUL W WOODS
4737 [redacted] Chapel Terrace
[redacted], D.C.

[redacted] ZILBER
[redacted] Dr.
[redacted], Md.

I am calling you all together to tell you the latest concerning the situation involving the Guild.

At lunch today our attorney and the Guild's attorney discussed the situation. Our attorney's position is that the Guild does not have the support of a majority of you. Therefore, we are filing to day a petition for an election with the National Labor Relations Board. We will keep you advised of what happens. In the meantime, just continue your work as you have in the past.

(At this point I cannot answer any questions.)

April 19, 1973

Read to Pharmacists

(copy)

Pharmacists - April 19, 1973

Avella, Gennaro
Baron, Melvin
Beasley, Myron
Campbell, Lena
Chatlin, Gerald
Downard, George
Doyle, James
Edwards, Joan
Garofalo, Peter
Giffen, Robert
Goldman, Benjamin
Johnson, Paul
Kim, Yoon
Levy, Marvin
Lewis, Constance
Lowery, Modestine
Maciulla, Salvadore
Meszaros, John
Richardson, George
Rosenfeld, Gerald
Shello, Ruby
Skalski, George
Smith, John
Testamark, Beverly
Turner, Eugenia
Wolf, Alfred
Wooden, Marcia
Woods, Paul

NRTA AARP PHARMACY

1224 24TH STREET, N.W.
WASHINGTON, D.C. 20037

May 30, 1973

As you know on Tuesday we reduced the hours for employees from 42½ to 40 hours per week. This was consistent with our policy of periodically reviewing our procedures. Some of you may even recall that some years ago we used to work Friday nights and Saturdays, but changed that policy, too.

By reducing these hours for the other employees, it was evident that it was not feasible for our production line to operate efficiently with the pharmacists working a 42 1/2 hour work week.

Therefore, we are today reducing the hours for pharmacists to 40 hours per week in order to be consistent with our production line.

(copy)

NLRB-31
(5-64)

# SUBPOENA DUCES TECUM

59a-62a

## UNITED STATES OF AMERICA
## NATIONAL LABOR RELATIONS BOARD

To FRANCIS P. FRARY, PRESIDENT
Metropolitan Guild of Pharmacists

*Request therefor having been duly made by* Retired Persons Pharmacy

*whose address is* 1224 24th Street, N.W., Washington, D.C.

*YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE*
*of the National Labor Relations Board,*
*at*
*in the City of*
*on the* 14th *day of* August , 1973 , *at* 10 *o'clock* a.m.
*of that day, to testify in the Matter of*

*And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:*

(SEE ATTACHED)

B- 103859

*In testimony whereof, the seal of the National Labor Relations Board is affixed hereto, and the undersigned, a member of said National Labor Relations Board, has hereunto set his hand and authorized the issuance hereof.*

*Issued at*
*this* *day of* , 19

16-65497-4

63a

## RETURN OF SERVICE

*I hereby certify that, being a person over 18 years of age, I duly served a copy of the within subpena*

(Indicate by check ✓ method used.)

- X *in person*
- *by registered mail*
- *by telegraph*
- *by leaving copy at principal office or place of business, to wit:*

.....

.....

.....

.....

*on the person named herein on* .....

AUGUST 8, 1973

(Month, day, and year)

Jane W. Gantels

(Name of person making service)

Admin. Assistant

(Official title, if any)

---

*I certify that the person named herein was in attendance as a witness at* .....

.....

OR .....

(Month, day or days, and year)

.....

(Name of person certifying)

.....

(Official title)

U. S. GOVERNMENT PRINTING OFFICE 16—69497-1

1. Originals or duly authenticated copies of the Constitution and By-Laws of said

Metropolitan Guild of Pharmacists

2. Originals or duly authenticated copies of the 1971 and 1972 LM-1 and LM-2 reports of said

Metropolitan Guild of Pharmacists

3. All books, records, documents, papers and other evidences of initiation fee and dues payments from employees of Retired Persons Pharmacy who are members of said

Metropolitan Guild of Pharmacists

for the years 1971 - 1973, identifying each payor by name, home address and employee job classification, including, but not limited to, dues check-off authorizations executed by such members on behalf of the Guild.

4. All books, records, documents, papers and other evidences of membership by employees of Retired Persons Pharmacy in said

Metropolitan Guild of Pharmacists

for the years 1971 - 1973, including, but not limited to, designation cards executed by such employees on behalf of the Guild.

RECEIPT FOR CERTIFIED MAIL—3( (plus postage)

8/8/73

No. 20222

SENT TO
FRANCIS F. FRARY, PRESIDENT
STREET AND NO. MET. GUILD OF PHARMACISTS
110 HAMILTON AVENUE
P.O. STATE AND ZIP CODE
SILVER SPRING, MD.

POSTM... OR DATE
AUG 8 1973

OPTIONAL SERVICES FOR ADDITIONAL FEES

RETURN RECEIPT SERVICES
1. Shows to whom and date delivered 15¢
With delivery to addressee only 65¢
2. Shows to whom, date and where delivered 25¢
With delivery to addressee only 85¢
DELIVER TO ADDRESSEE ONLY 50¢
SPECIAL DELIVERY (extra fee required)

PS Form 3800 Apr. 1971

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...)

Air Mail - Special Delivery

August 3, 1973

Honorable Eugene G. Goslee
Chief Administrative Law Judge
National Labor Relations Board
1231 25th Street, N.W.
Washington, D.C. 20037

Re: Retired Persons' Pharmacy
m Case No. 5-CA-6108

Dear Sir:

This is in regard to our July 12th Motion for a Protective Order or Order of Severance and Direction of Immediate Hearing.

Since the trial on the above-captioned matter is scheduled for August 14, there are only six remaining working days available to complete our trial preparation. To date, we have refrained from interviewing any of the employees pending resolution of this Motion.

We are deeply concerned about our continuing inability to conduct our usual and necessary preparation for this type of case. The enclosed letter from Counsel for the General Couse, Edwin S. Hopson, increases our concern.

We respectfully request a response to the Motion by early next week. Due to the frequent problems with the mail, we would appreciate a telephonic response, in addition to a written response, so that we may take any appropriate action which may be necessary.

Very truly yours,

JACKSON, LEWIS, SCHNITZLER & KRUPMAN

Robert Lewis

RL:bf
Enc.

CC: William C. Humphrey, Esq.
Regional Director, Fifth Region

Ira M. Lechner, Esq.
Attorney for Charging Party

Peter G. Nash, Esq.
General Counsel
National Labor Relations Board

TO: H.D.

FROM: GEORGE A. LEET
ASSOCIATE EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.

DATE: AUGUST 14, 1973

RE: NRTA-AARP PHARMACY
5-CA-6108

RESPONDENTS REQUEST FOR SPECIAL PERMISSION TO APPEAL ADMINISTRATIVE LAW JUDGE RULING DENYING MOTION FOR PROSPECTIVE ORDER AND FOR IMMEDIATE HEARING IS HEREBY DENIED.

BY DIRECTION OF THE BOARD

Dictated by: Lucy Petracca
Dictated to: J.L.

CHARGING PARTY EXHIBIT

IN NLRB CASE NO. 5-CA-6108

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

RETIRED PERSONS PHARMACY, t/a
NRTA-AARP PHARMACY

and

Case No. 5-CA-6108

METROPOLITAN GUILD OF PHARMACISTS

PETITION TO REVOKE SUBPENA TO
PRODUCE GUILD RECORDS

Charging Party, The Metropolitan Guild of Pharmacists, hereby petitions to revoke the subpena to produce Guild records for the following reasons:

1. The subpena is too broad.

2. The subpena is issued to the wrong person, Francis Frary, while once an officer of the Guild, is no longer an officer, and in fact is not even a member of the Guild, and who does not have custody of said records.

3. The material sought is confidential information which the Guild is privileged to retain free from the Employer's eyes.

4. The material sought is not relevant to the Employer's asserted defenses. The Employer refused to bargain on April 19, 1973 and at that time had no access to the Guild's records which it now subpenas. Its defense to the Complaint must be premised upon the objective evidence available to it and in its knowledge on that date and it should not now be permitted to engage in a fishing expedition into the Guild's files.

Respectfully submitted,

Ira M. Lechner
Attorney for Charging Party

August 14, 1973

APPENDIX

| Page | Line | |
|---|---|---|
| 87 | 22 | Change "Skowski" to read "Skalski" |
| 88 | 5, 11, 15 | Change "Skowski" to read "Skalski" |
| 89 | 11 | Change "Skowski" to read "Skalski" |
| 90 | 20, 22 | Change "Skowski" to read "Skalski" |
| 174 | 7 | Change "May" to read "March" |
| 225 | 2, 9 | Change "impact" to read "in fact" |

9/21/73

JD-661-73
Washington, D.C.



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

RETIRED PERSONS PHARMACY, t/a
NRTA-AARP PHARMACY

and

Case No. 5-CA-6108

METROPOLITAN GUILD OF PHARMACISTS

Robert Lewis, Esq., G. Harrison Darby, Esq., and Peggy L. Braden, Esq. (Jackson, Lewis, Schnitzler & Krupman), New York, N.Y., for Respondent.
Ira M. Lechner, Esq., Washington, D.C., for the Charging Party.
Edwin S. Hopson, Esq., for the General Counsel.

## DECISION

### Statement of the Case

GEORGE J. BOTT, Administrative Law Judge: Upon a charge and an amended charge of unfair labor practices filed by the above-named Union on May 17 and May 22, 1973, respectively, against Retired Persons Pharmacy, herein called Respondent or Employer, the General Counsel of the National Labor Relations Board issued a complaint on July 2, 1973, alleging that Respondent had engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, herein called the Act. Respondent filed an answer and a hearing was held before me at Washington, D. C. on August 14 and 15, 1973, at which all parties were represented. Subsequent to the hearing, the Respondent and the General Counsel filed briefs which have been considered.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

1/ General Counsel's unopposed motion to correct the transcript is granted.

## Findings of Fact

### I. Jurisdiction of the Board

Respondent, a corporation located in the District of Columbia and engaged in the sale and distribution of drugs, received materials directly from places located outside the District of Columbia valued in excess of $50,000, and sold and shipped goods valued in excess of $50,000 to points located outside the District of Columbia, during the 12 months preceding the issuance of the complaint.

Respondent is an employer engaged in commerce within the meaning of the Act.

### II. The Labor Organization Involved

Metropolitan Guild of Pharmacists, herein called the Guild, is a labor organization within the meaning of the Act.

### III. The Alleged Unfair Labor Practices

#### A. The Issues

The principal issues are:

1. Whether Respondent's withdrawal of recognition from the Guild on April 19, 1973, was in good faith, based on objective considerations and a reasonably grounded doubt that the Guild no longer represented a majority of unit employees.

2. Whether Respondent violated the Act by interrogating unit employees on May 21, 1973, allegedly for the purpose of preparing a defense to the refusal to bargain charge.

3. Whether Respondent violated the Act by unilaterally changing the hours of unit employees.

4. Whether Respondent was deprived of due process because of the Administrative Law Judge's rulings on evidence and because of an asserted inability to prepare for trial by reason of the issuance of the complaint attacking its interviewing of unit employees.

B. Basic Findings of Fact

Respondent's pharmacists having chosen the Guild by a vote of 20 to 10 in a Board election, the Board, on November 29, 1971, certified the Guild as the collective-bargaining representative of all registered and/or graduate pharmacists of the Employer at its Washington, D. C. location, but excluding supervisors and the other usual exclusions. 2/

Respondent and the Guild commenced negotiations, but a final agreement was not executed until September 1, 1972, effective from May 29, 1972, to May 29, 1973. The contract contains no union shop clause, and no dues checkoff provision.

Contrary to Respondent's contention, I find that there were no substantial changes in the composition of the unit during the life of the contract. This is evident from a comparison of the Excelsior list, which the Employer supplied the Board in connection with the election, and a list of employees in the unit on April 19, 1973, when Respondent ceased recognizing the Union. It appears that 24 employees out of 28 in the unit were employed when the election was held and remained employed on April 19, 1973.

I also find, contrary to Respondent's contention, that the Guild and its members remained active to Respondent's knowledge during the life of the contract. Paul Woods, one of the Guild's grievance committeemen, testified, without contradiction, that he handled a number of grievances with Supervisor Brault, and one with Manager Altman during the life of the agreement. Two employees were members of the Board of Directors of the Guild, and the credited testimony is that they and unit employees participated in many Guild meetings on and off Respondent's premises. During the life of the contract, at least six meetings, generally attended by approximately 20 unit employees, were held on Respondent's premises during lunch or break periods. 3/

On March 7, 1973, the Guild notified Respondent's attorney of its intent to terminate the agreement at its expiration date and to modify certain of its terms through collective bargaining. After further correspondence a meeting between Respondent's attorney Lewis and Guild attorney Lechner took place in Washington, D. C. on April 19, 1973.

2/ Four ballots were challenged in the election. The challenges were not resolved since they were not determinative of the results, but it now appears that three of the persons challenged were supervisors.

3/ The findings on "viability" and Respondent's awareness of it are based on the credited testimony of employees Woods and Meszaros.

During the meeting, Lewis advised Lechner that the Employer felt that the Guild no longer continued to have the support of a majority of the pharmacists and intended to file a petition with the Board for a new election. Lechner opposed such a course and asked Lewis what evidence the Employer had to support its belief. I credit Lechner's testimony that he received no response to his inquiry about what Respondent's belief was based on.

On April 20, 1973, Respondent filed a representation petition with the Board, which was not accompanied by any evidence to support its expressed belief that the Guild no longer had majority support, and on May 2, 1973, the petition was dismissed as untimely, since it was filed during the insulated period of the contract. It was stipulated that since April 19, 1973, Respondent has refused to meet and bargain with the Guild. The first charge of refusal to bargain was filed by the Guild on May 14, 1973, and served on Respondent on May 17.

On May 21, 1973, attorneys Giovannetti, G. Harrison Darby and Peggy L. Braden, from the law firm which has represented Respondent throughout, interviewed all unit employees at Respondent's premises, using the same introductory statement and questions. The prefatory statement and the questions used by the attorneys are in evidence and are also attached hereto as "Appendix A". The introductory statement, read to all unit employees at the commencement of the interviews states, in part, that the Employer does not feel that the Guild has the support of the pharmacists and that the interviewer would "like to ask you a few questions to assist in the preparation of a defense to unfair labor practice charges filed by the Guild." There are 46 questions in the questionnaire.

The employees were interviewed separately, in private rooms away from the work area, after having been summoned from their stations by a management representative. They were advised that they did not have to answer any questions and were free to leave. In addition, they were told there would be no reprisals if they did not cooperate. It was stipulated that of the 27 unit employees called for interviews, 16 answered most or all of the questions. It also appears that the Guild's attorney, having quickly learned that the employees were being questioned, counseled their plant representative to advise them to refuse to cooperate if they wished, but, if they feared reprisals, to comply, but to lie.

Sometime in early May, 1973, prior to the expiration of the collective-bargaining contract, Respondent's officials decided to reduce the workweek of unit employees by 2 hours. This decision was implemented on May 30, 1973, the day after the contract expired, and it was stipulated that it was done without notice to and bargaining with the Guild.

Respondent presented certain evidence in support of its contention that its refusal to bargain with the Union since April 19, 1973, was based on its good faith belief that the Union no longer had the support of a majority of employees.

Manager Altman testified that his belief that the Guild did not have majority support of the pharmacists was based, in part, on his inability to observe any Guild activity among the employees, but I have found that the Guild was sufficiently active, and that Respondent knew it. Altman also testified that certain employees expressed dissatisfaction with the Guild to him. He said that "probably in the fall of 1972" employee Avella stated to him that he could not understand why the employees wanted the Guild because it had done nothing for them, but, in fact, had lost them money. He also had two talks with employee Johnson, he said, one of which occurred before the election. In the second conversation, which he said took place in "the first part of this year," Johnson told him that he should spend more time trying to get rid of the Guild than in attempting to "pacify" it.

On or about April 1, employee Turner showed him a list of employees divided into two columns, Altman said. There were 14 names listed in each column, and Altman said that Turner stated that one group were those whom she "believed" were members of the Guild and the other those who were not "in favor of the Guild."

Altman took employee Levy to dinner in October 1972 in appreciation for extra production, he said. He testified that during dinner Levy commented that he did not need the Guild to represent him, and preferred to represent himself.

In addition to the four conversations he had with employees, as just set out, Altman said that Supervisor Brault told him that he had spoken to "many" employees and that they were "unhappy with the Guild." These conversations with employees, which Brault reported to him, and his own, "indicated the Guild did not enjoy the full support of the pharmacists," nor did they have majority support of the pharmacists," Altman stated.

Pharmacy Manager Brault testified that he had many conversations with employees about the Guild after the election but prior to April 19. There were 28 pharmacists employed on April 19, and Brault testified, without contradiction, that 14 of them expressed dissatisfaction with the Guild to him. The names of the pharmacists and the essence of their remarks, as Brault described them, follow:

Avella. He was "quite outspoken, asking me on numerous occasions why we didn't get rid of the Guild . . . why don't you get rid of those bastards . . . ."

Campbell. One conversation, in "early April", in which she expressed strong displeasure with the treatment of a fellow employee (Kim) by the Guild. This statement could have been made "three or four months ago," according to Brault.

Downward. More than one conversation in which he would ask, "What are the Guild boys up to now?" On other occasions he said he "had nothing personal against the Guild, but he did not need it."

Garofalo. He also complained about the Guild treatment of employee Kim around the same time employee Campbell did, and he also stated that he had no use for the Guild.

Griffen. Many conversations at unspecified times between the election and April 19, in one of which he stated that although he had nothing personal against the Guild, "he just couldn't use them." At other times he voiced annoyance over the "noise" in the pharmacy and asked Brault if he could not get the "Guild people" to quiet down.

Goldman. At some unremembered time, "some time ago," but "definitely" prior to April 19, Goldman replied that he had "no use for them" when Brault asked him if the Guild "was bothering him."

Johnson. Was in Brault's office frequently, before and after the election, at one time complaining about Kim's treatment by the Guild, and asking, something "to the effect", if there was anything the Employer could do to get the Guild "off her back."

Kim. During the first 3 months of the year many conversations with her in which she complained about the Guild people interfering with her work and trying to get her to join the Guild.

Levy. From shortly after the election to "early this year", he complained about the Guild interfering with his work and stated that he wanted to be "left alone to do his own work the way he wanted to."

Lewis. Having been told by his assistant that the Guild was now "going after Lewis," Brault asked her if anyone was bothering her, and she replied that "she didn't bother with the Guild at all."

Maciulla. Told Brault that he "didn't want any part of the Guild." Also in early 1973, when he returned to work after a severe illness, stated that he had never been involved with the Guild before and so they were not "going to bother him." This remark was triggered by Brault's expressed concern over whether the Guild was "bothering" the employees.

Testamark. Asked at time of Kim incident whether she was being "bothered" by the Guild, she answered that she "had no time for the Guild."

Turner. In latter part of 1972 she was disillusioned with the Guild and did not want any part of it.

Wolf. Three or four conversations prior to April 19, complaining "about the noise and the meetings, the gatherings that were going on (that) he attributed to the Guild people." Once when Brault said he would speak with the Guild about the problem, Wolf told him to forget the grievance because the Guild would do nothing about it.

Brault testified that he frequently discussed the conversations he had with employees about the Guild with Altman, at staff meetings or other times.

## C. Analysis, Additional Findings and Conclusions

### 1. The claim of "good faith doubt" of the Guild's majority status

The parties agree that it is well established that a certified union, upon expiration of the first year following its certification, enjoys a presumption that its majority representative status continues. 4/ Once the presumption is shown to be operative, as here, a prima facie case is established that an employer is obligated to bargain and that its refusal to do so is unlawful. The prima facie case may be rebutted if the employer affirmatively establishes that its refusal was predicated upon a "good faith and reasonably grounded doubt of the union's continued majority status." 5/ The presumption may also be rebutted if the employer can show by competent evidence that the union in fact no longer enjoyed majority representative status. 6/

With respect to the first of these methods of rebutting the presumption, that is, "good faith doubt," no "simple formula" exists for testing the issue, and the question "can only be answered in the light of the totality of the circumstances involved in a particular case." 7/

Since I have discredited Altman's testimony that he had reason to believe that the Guild was dormant, 8/ and because there is no evidence of any substantial change in the unit upon which Respondent can

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4/ Automated Business Systems, A Division of Litton Business Systems, Inc., 205 NLRB No. 35; Emerson Manufacturing Company, Inc., 200 NLRB No. 33; Terrell Machine Co., 173 NLRB 1480, enf'd. 427 F. 2d 1088 (C.A. 4). "Presumptions in the law are a procedural substitute for evidence (and they are based upon) the probability of fact . . . ." N.L.R.B. v. Tragniew, Inc., 470 F.2d 669, 674 (C.A. 9).

5/ Terrell Machine Co., supra, n. 4.

6/ Id. at 1480-81.

7/ Celanese Corporation of America, 95 NLRB 664, 671-673.

8/ Not only were employees Meszaros and Woods persuasive on this point, but Supervisor Brault, who Altman said briefed him on conversations he had with employees about their attitude toward the Guild, testified that employees complained to him on numerous occasions about Guild activity in the pharmacy.

rely, 9/ there remains for examination only the conversations that Altman and Brault had with unit employees, sometime prior to Respondent's refusal to continue recognition, in order to determine whether that evidence is of such character that Respondent could on the basis of it reasonably believe that the Guild no longer maintained "majority representative status," which is defined as "a majority of employees in the unit wish(ing) to have the union as their representative for collective bargaining purposes." 10/

Brault testified about conversations he had with 14 unit employees, the content of which, Respondent contends, led it to objectively and reasonably conclude that the Guild had lost the support of a majority of the pharmacists. 11/ In my opinion, the evidence found in the remarks of at least six employees who spoke with Brault is not sufficient to overturn the Guild's presumption of continued majority support because the statements are not clear or firm enough indications that the employee did not want the Guild to represent him as to reasonably justify Respondent believing that such was the case.

Not only was Brault unable to fix the time he spoke with Campbell, but her comments amount to no more than a criticism of what she apparently thought was unfair treatment of employee Kim by Guild members. Similarly, employee Johnson merely asked Brault, something "to the effect," whether Respondent could get the Guild "off Kim's back." In neither Campbell's nor Johnson's statements of disagreement with Guild member action is there a clear indication that the speaker did not want to be represented by the Guild. Disagreement with the policies of a representative does not mean that one has abandoned support of that representative. 12/

Supervisors having apparently reported to him that Guild members were talking to fellow employees in the unit, Brault approached some of these employees and questioned them. He said he asked Lewis if anyone was "bothering her," and that she replied that she "didn't bother with the Guild at all." Testamark responded to his inquiry by stating that "she had no time for the Guild." Laying aside the possible impropriety of Brault's questioning of Lewis and Testamark, as well as Lewis' apparent avoidance of the main thrust of Brault's question, I find that their responses did not rise to the level of evidence which would reasonably support a belief that they did not desire Guild representation. Not "bothering with" or having "no time" for the Guild are equivocal statements which can be interpreted as meaning "no time" for active support,

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9/ Cf. Convair Division of General Dynamics Corporation, 169 NLRB 131, 134-135.

10/ Terrell Machine Co., supra, n. 4, at 1481, n. 3.

11/ Altman testified to conversations with four employees, but they were among the 14 Brault heard from.

12/ Gulf Machinery Co., 175 NLRB 410, 413.

such as, attendance at union meetings or payment of dues rather than as not desiring representation at all. Brault also asked employee Goldman if the Guild was "bothering him," which is not the same as asking whether he wanted to be represented by the Guild, and although Brault said Goldman indicated no "use for the Guild," Brault's qualification of the response as being "basically" what the employee stated robs it of any probative value.

Employee Wolf complained to Brault a number of times about "Guild people" making too much noise in the pharmacy, apparently while holding Guild meetings. Brault was unable to fix the time of these statements except to say that they were both before and after the Board election. In addition to the uncertainty about the dates of Wolf's criticisms of Guild activity, I find that his remarks do not constitute probative evidence fairly showing that Wolf did not want the Guild to represent him for the purpose of collective bargaining. 13/

I find that the evidence is insufficient to overcome the presumption of continued majority support because in at least six of the instances of conversations with employees about the Guild the evidence does not meet the Board's standards of objective considerations sufficient to support a reasonable doubt of the Guild's majority. I find, therefore, that Respondent did not in good faith believe that the Guild had lost its majority even if the other 8 employees in the unit of 28 who talked to Brault had withdrawn their support from the Guild and clearly stated such to Respondent's officials. 14/

2. Respondent's poll of employees to determine whether the Guild in fact represented a majority of employees

The prima facie case based upon the presumption that majority status continues after the expiration of the certification year may also be rebutted if the employer can affirmatively establish by competent evidence that at the time of the refusal to bargain the union "in fact no longer enjoyed majority representative status." 15/

13/ Davis & Hemphill, Inc., 177 NLRB 282, 285.

14/ Altman testified that Brault had, or made, many "lists" of employees, who were "for," "against," or "in between." Brault did not mention these "lists" in his testimony, and they were not produced. Aside from the question this raises about Altman's testimony, it is significant that even on Brault's "lists," there were some persons "in between," and no majority indicated as "against." In Taft Broadcasting, WDAF-TV, AM-FM, 201 NLRB No. 113, 82 LRRM 1338, the Board noted that a secret poll of employees, which the employer took, which showed the employees evenly split on the question of union support, only weakened the presumption of majority support.

15/ Terrell Machine Co., 173 NLRB 1480, 1481.

Although its arguments in support thereof tend to overlap or even merge, Respondent defends its interrogation of unit employees on two grounds, the first being that its attorneys, by speaking with employees, wanted, at the hearing, "to be able to present (evidence of) no majority (in fact) on the date of the refusal . . . ." 16/ Respondent admittedly had no independent evidence that the Guild, in fact, no longer enjoyed majority support, and it is clear to me, therefore, despite some confusion engendered by Respondent's reliance on the principle that Respondent is entitled to prepare a defense to an unfair labor practice charge, -- a matter to be handled next -- that one thing at least Respondent's attorneys were doing on May 21, when they questioned unit employees about their membership and activities in the Guild, was conducting a nonsecret poll or survey intended to gather evidence to support an alternative contention that the Guild no longer in fact represented the employees, if its other position that it had a good faith doubt, based upon objective considerations, that the Guild did not enjoy majority support was found legally unsupportable. 17/

The Board has long been confronted with the problem of how an employer may determine that union claims to represent a majority of his employees are honest claims. In Blue Flash Express, Inc., 18/ the Board found systematic interrogation of employees, accompanied by certain safeguards, to determine whether in fact employees supported the union, to be a lawful poll, although nonsecret. In Struksnes Construction Co., 19/ however, the Board revised its Blue Flash criteria and held that the following standards must be met when testing a union's claim of majority:

> Absent unusual circumstances, the polling of employees by an employer will be violative of Section 8(a)(1) of the Act unless the following safeguards are observed: (1) the purpose of the poll is to determine the truth of a union's claim of majority, (2) this purpose is communicated to the employees, (3) assurances against reprisal are given, (4) the employees are polled by secret ballot, and (5) the employer has not engaged in unfair labor practices or otherwise created a coercive atmosphere.

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16/ Respondent's brief, page 31, quoting Attorney Darby's testimony at the hearing.

17/ At the hearing, Respondent's counsel stated that he "assumed" at the time that Respondent "probably" had objective considerations to support its refusal, but since he had not "investigated it thoroughly" or "at all," he was preparing "an alternative defense" of no majority in fact. He testified that the "purpose of (the interviews was not) to ascertain objective considerations for the pharmacy's refusal to bargain."

18/ 109 NLRB 591.

19/ 165 NLRB 1062, 1063. In N.L.R.B. v. Gissel Packing Co., 395 U.S. 575, 609, the Supreme Court cited the Struksnes standards with apparent approval. In Taft Broadcasting, supra, n. 14, the employer's action in conducting a secret poll of employees on the majority issue was not attacked as being in violation of Struksnes standards.

Respondent's attorneys' poll of employees was defective on two grounds. First of all, it was not secret because each employee was asked to state his or her name before the interview began. In addition, the true purpose of the poll was not communicated to the employees. The only legitimate purpose of such a poll is to determine whether employees wish a union to continue as their representative. 20/ In their introductory remarks, the attorneys, reading from a prepared statement, advised the employees that they were advised by the management of NRTA that they did not feel that the Guild has the support of the pharmacists (and) therefore would like to ask you a few questions to assist in the preparation of a defense to unfair labor practice charges filed by the Guild." This was far from being a simple statement of the question, coupled as it was to an equally unclear reference to "a defense to unfair labor practices," and the numerous questions which the interviewers then proceeded to ask could only serve to blur the issue further. It would appear, therefore, that under Struksnes the poll was coercive and a violation of Section 8(a)(1) of the Act, unless it was excused on another ground.

Starting from the premise that a refusal to continue recognition of an incumbent is not an unfair labor practice if an employer is able to show by clear evidence that a union does not in fact enjoy the support of a majority of employees, and then relying on certain cases which recognize the right of employer to interview employees to ascertain facts to assist it in preparation of its defense in case a complaint is issued, Respondent contends that its interrogation here was for that purpose and was permissible as a matter of law. 21/ I find that the cases upon which Respondent relies do not apply as a matter of principle or are factually distinguishable.

In Johnnie's Poultry Co., 22/ the Board noted that "Despite the inherent danger of coercion therein," it and the courts had held that "where an employer has a legitimate cause to inquire," he may interrogate employees on matters involving their Section 7 rights without violating the Act. The Board described the purpose which had been held to be legitimate as being of two types: "the verification of a union's claimed majority status to determine whether recognition should be extended . . . and the investigation of facts concerning issues raised in a complaint where such interrogation is necessary in preparing the employer's defense for trial of the case."

In its discussion of the first type of situation, that is, testing a union's claim of majority representation, the Board, in summarizing its policy of permitting interviewing of employees in order to determine whether recognition should be granted, relied on Blue Flash Express, Inc., 23/

20/ Struksnes Construction Co., supra, n. 19.
21/ N.L.R.B. v. Katz Drug Co., 207 F. 2d 168 (C.A. 8); Joy Silk Mills v. N.L.R.B., 185 F. 2d 732 (C.A.D.C.); N.L.R.B. v. Neuhoff Bros., Packers, Inc., 375 F. 2d 372 (C.A. 5); Johnnie's Poultry Co., 146 NLRB 770; enforcement denied on other grounds, 344 F. 2d 617 (C.A. 8); May Department Stores Co., 70 NLRB 94, 95.
22/ Supra, n. 21, at 774-775.
23/ Id. at 773.

a situation involving polling of employees, but as pointed out earlier, Blue Flash Express was modified in Struksnes to preclude nonsecret polling of employees. The poll conducted by Respondent's attorney in this case was nonsecret, and it cannot be made less of a poll by attempting to squeeze it under the principle covering the second situation, preparation for trial, because it does not fit there. In my opinion, Respondent is attempting to improperly blend principles designed to cover different kinds of cases in order to legitimatize its nonsecret poll. If this can be done then Struksnes is no longer viable, because all that an employer need do to avoid its sanction is to label its nonsecret interviews "preparation for trial" after it denies a union's request for recognition or refuses to continue bargaining with an incumbent.

But even if Respondent's attorneys' questioning of employees is judged on the basis of the rule in Johnnie's Poultry Co., it is clear that the questions in the questionnaire used by them, viewed in the light of the guides set forth by the Board and the courts in the cases where the issue was considered, all exceeded the "area of permissible inquiry." The Board has held, with court approval, that in such situations certain safeguards "designed to minimize the coercive impact of such employer interrogation" must be observed. Not only must the employer communicate the purpose of the questioning to the employees, assure them against reprisals and obtain their cooperation on a voluntary basis, but "the questions must not exceed the necessities of the legitimate purpose by prying into other union matters, eliciting information concerning an employee's subjective state of mind, or otherwise interfering with the statutory rights of employees." 24/

In Joy Silk Mills v. N.L.R.B., the Court described the Board's standards in these cases as "reasonable . . . and aptly designed to carry out the purposes of the Act." 25/ Noting that "the fact that the fruits of the questioning are to be used in preparation for a hearing does not make the interrogation any less coercive," the Court interpreted the Board's rule to mean that despite the coercive nature of the interrogation "a limited amount of such questioning" is permitted in fairness to the employer despite the "possible restraint which may result." 26/ The employer, however, in the Court's view, "is restricted to questions relevant to the charge of unfair labor practices and of sufficient probative value to justify the risk of intimation which interrogation as to union matters necessarily entails." 27/ It has also been observed that there is "a delicate balance between the legitimate interests of the employer in

24/ Ibid.

25/ Supra, n. 21 at 743. The Court set forth the Board's policy as the Board had stated it in May Department Stores Co., 70 NLRB 94, 95. In that case, the Board, in addition to the restrictions laid down in Johnnie's Poultry, held that the interrogation must not "discuss the nature or extent of union activity."

26/ Ibid.

27/ Ibid.

preparing its case for trial and the interest of the employees in being free from unwarranted interrogation . . . for . . . any interrogation by the employer relating to union matters presents an ever present danger of coercing employees in violation of their Section 7 rights." 28/ "Consequently, the process of investigation through interrogation of employees must be a carefully conducted one lest that very activity -- or the prospect of it -- inhibit employees . . . ." 29/

Since, in seeking bargaining, the Guild was not relying on authorization cards or other documentary evidence but on the presumption that its Board certification entitled it to, the only relevant inquiry in interviews designed to determine whether it continued to have majority support in fact was "do you wish the (Guild) to represent you for purposes of collective bargaining?" 30/ But, as pointed out earlier, this question was never posed, although the questionnaire was designed and the interviewer attempted to explore almost every other area of employee union activity. Thus, all questions in the questionnaire fail the test of relevancy.

The questionnaire is also defective because it delves into the union activities of employees, their fellow employees and possible nonemployee members or officers of the Guild. 31/ Employees were asked if they were members of the Guild; what they did to become members; whether they were paying union dues; whether and how often they attended union meetings; who the officers of the Guild and the shop steward were; whether they ever had a grievance handled by the Guild, and, if so, whether it was handled satisfactorily. These inquiries about employee union activity and the activities of others, disregarding as they do the "delicate balance" that must be observed in a "carefully conducted" investigation, suggests an attempt to undermine the Guild's status as collective-bargaining representative rather than a legitimate effort to prepare for trial. 32/

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28/ Texas Industries, Inc. v. N.L.R.B., 336 F. 2d 128, 133 (C.A. 5).

29/ N.L.R.B. v. Neuhoff Bros., Packers, Inc., supra, n. 21 at 377.

30/ Terrell Machine Co., supra, n. 4 at 1481, n. 3.

31/ Paragraph 8(b), was amended at the hearing to add the allegation that Respondent illegally interrogated employees with regard to other employees' membership in and activities on behalf of the Guild, as well as with respect to their own. As appears from the discussion of this subject, infra, the amendment is factually supported by many of the questions in the written questionnaire.

32/ They also suggest, contrary to Respondent's testimony at the hearing, that the questionnaire was designed to discover support for Respondent's position that it believed the Guild to be inactive and that this was an "objective consideration" supporting its belief that the Guild did not represent a majority.

Other questions are irrelevant as a matter of law even if the right question had been asked. The questions about membership and dues are irrelevant because there is no necessary correlation between these items and the number of union supporters. 33/

Some of the questions are improper because they probe into matters which involve the subjective state of mind of the employee. Examples are: Do you actively support the Guild; was your grievance handled satisfactorily, if you had one; and what provisions of the Guild's constitution do you remember.

Finally, apart from the motive of their draftsmen, practically every inquiry is so remote from the issue in the case as to have no probative value in determining the question of whether the Guild enjoyed continued majority support. These inquiries, as indicated earlier, are directed to such matters as membership, dues, attendance at meetings and the names of officers or stewards of the Guild, but they also delve into such extraneous matters as how and to whom an employee pays dues; increases in dues and imposition of assessments; number and kind of Guild communications to members; address and telephone number of the Guild; and the employee's awareness of the provisions of the Guild's constitution and the labor agreement's expiration date. "The evidence which could be garnered from that questioning would be of so little probative value as not to warrant the risk of infringing upon employee rights." 34/

33/ Terrell Machine Co., supra, n. 4 at 1481; Barrington Plaza and Tragniew, Inc., 185 NLRB 962, 963.

34/ Joy Silk Mills v. N.L.R.B., supra, n. 21 at 744. Respondent's counsel's arguments that all questions were relevant because, in effect, an answer given to one would throw light on the significance of answers to others, allowing counsel to make a judgment as to whether the employee was a member of or supported the Guild is not only unimpressive but, in my view, makes the interrogation more offensive. Counsel was engaging in a form of cross-examination, and, in effect, conducting a kind of a lie detector test, using "control" questions to gauge the truth of employees' answers. For example, counsel states that questions about the amount of dues and method of payment were relevant because "the responses to these questions would assist in weighing the accuracy of a pharmacist's statement that he was paying dues." Counsel was not willing to accept evidence of employee support for the Guild obtained from answers to some of its questions without testing those responses with other questions, the significance of which only counsel and not the subjects of the survey understood at the time. The final determination then as to whether the Guild maintained majority support would depend on counsel's subjective evaluation of the responses. This is not the kind of clear evidence that must be presented to show that a union does not represent a majority in fact, and it was, moreover, a patently unfair advantage taking of employees who might have in fact desired continued representation by the Guild.

Respondent's interrogation was wide ranging, mostly irrelevant, delving deeply not only into employee states of mind but into their most intimate activities with respect to the Guild. I find that it exceeded by far the limitations laid down in the cases and therefore violated Section 8(a)(1) of the Act.

3. The refusal to bargain by withdrawing recognition and by the unilateral change in working hours

Having found that Respondent's refusal to bargain with the Guild was not predicated on a good faith and reasonably grounded doubt of the Guild's continued majority status, and having also found that Respondent's interrogation of employees was a violation of the Act and not a permissible effort to prepare a defense to the refusal to bargain charge, it follows that Respondent violated Section 8(a)(1) and (5) of the Act by refusing to meet with and recognize the Guild on and after April 19, 1973, and by, on May 21, 1973, without notice or bargaining with the Guild, interrogating its employees in the appropriate unit with regard to their membership and activities and the activities of others on behalf of the Guild.

I also find that by changing the hours of unit employees from 42 hours to 40 hours unilaterally and without notice to the Guild, Respondent also violated Section 8(a)(5) and (1) of the Act.

4. The due process contentions

Following the interviewing of pharmacists of May 21, 1973, the Guild filed an amended charge complaining about the matter, and, on July 2, 1973, the General Counsel issued the complaint in this case which included an allegation that the interviews were violative of the Act.

Respondent argues that General Counsel interfered with its right to interview employees by issuing the complaint and subsequently indicating that the complaint would be amended if Respondent continued to interrogate employees. Consequently, Respondent concludes, Respondent was deprived of due process of law. 35/ I find Respondent's position to be completely

35/ On July 12, Respondent sought a "protective order or order of severance" from an administrative law judge, requesting that General Counsel be enjoined from further amending the complaint to allege additional violations of the Act, if counsel for Respondent engaged in additional interviews of employees in preparation for trial, or, in the alternative, that the issue of interrogation be severed from the other issues and immediately set for trial. The motion was denied, and the Board denied Respondent's request to appeal the ruling. In General Counsel's opposition to Respondent's motion, General Counsel alluded to counsel's interrogation of employees, which I have concluded violated the Act, and stated that such conduct "if repeated would clearly warrant amendment of the complaint."

without merit. General Counsel's amended complaint did not allege that any legitimate polling or interviewing of employees was illegal, and Respondent was free, with the assistance of competent counsel, to make an informed judgment with respect to what interviewing would be proper under the cases. Respondent cannot shift the responsibility for any failure on its part to prepare its defense to the General Counsel because he saw illegality in its past conduct. The General Counsel, acting under the provisions of the Act, has a responsibility for making legal judgments with respect to conduct charged to be a violation of the Act equal at least to counsel's obligation to adequately prepare a defense for trial. If General Counsel errs in his view of the facts or the law, the operations of the statute -- hearing, appeal, Board decision and appellate review -- provide a means for correcting those errors, but the initial responsibility to make the judgment remains his and may not be "chilled" or "inhibited" by counsel's fears that if he engages in proper preparation for trial in his contacts with employees General Counsel may erroneously complain about it. 36/

Respondent also argues that it was deprived of its constitutional rights by not being permitted to introduce testimony at the hearing from the pharmacists to prove that on April 19 the Guild did not in fact represent the pharmacists, and by the rejection of its offer to prove that "if these people were called the majority of the employees would indicate and would testify, would state under oath, that on the 19th of April they did not support the Union and they were not members of the Union." 37/

Prior to making its offer of proof, Respondent had moved to dismiss the allegation of the complaint alleging illegal interrogation of employees on the grounds that the interrogation was in preparation for its defense and that its preparation had been interrupted by the issuance of the complaint. Counsel stated that if the motion to dismiss were granted Respondent "would interview our employee witnesses prior to calling them to the stand." It was further explained that additional interviewing was necessary in order for "us to ascertain whether the (original) employee's answers that were given us were truthful and whether and which employees we should call as witnesses." Another of Respondent's attorneys explained, in support of the motion, that since the employees were interviewed on May 21, interviews which I have found to be coercive, no one had spoken to those persons. At another point in the record counsel repeated that no one had spoken to or discussed the issues with employees since the May 21 interviews and, because the employees had been advised by the Guild to lie in the interviews, it "is difficult for us to ascertain, even at this time when calling them, whether in fact what was ever said to us was true."

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36/ It is also not clear just what additional interviewing Respondent claims it would have engaged in if General Counsel had not amended his complaint. It had exhaustively interviewed all willing employees on May 21, and if it repeated those interviews the employees presumably would respond in the same fashion.

37/ Counsel's offer of proof quoted in Respondent's brief, page 7.

The Administrative Law Judge did not grant Respondent's motion to dismiss, and counsel for Respondent then stated that he would call as witnesses all unit employees and ask them if they supported or were members of the Guild on April 19, as bearing on the "majority in fact" issue. The Judge advised counsel that he would not permit those inquiries, but would permit questions bearing on whether any employee had indicated in anyway to any management representative, prior to April 19, that he did not support the Guild. In the light of my ruling counsel stated that he would not call any unit employees as witnesses, repeating that he had not spoken to employees since May 21.

It is obvious from counsel's statements that he had no facts in his possession to support his offer of proof that a "majority of the employees would indicate and would testify . . . that on the 19th of April they did not support the Union and were not members of the Union." This is so because if "no one" had spoken with the employees since the May 21 interviews, Respondent had no information on the majority in fact issue other than that gathered in the interviews. Aside from the fact that any data obtained from Respondent's interrogation was tainted and unreliable because of its illegality, there is no evidence, and no one suggests that there is, that a majority of employees interviewed indicated that they did not want the Guild to represent them; indeed, as has been stated before, they were not even asked that question. Counsel had no factual basis to support his offer, and this is one reason for rejecting it.

It appears, therefore, to use the shop-worn phrase, that counsel was proposing a fishing expedition, hoping to gather some evidence to support Respondent's position. Even if this were permissible under other circumstances, the coercive nature of the investigation and the unreliability of anything that could result from it are other reasons for denying it.

Four months after Respondent had refused to bargain with the Guild, employees would be examined and cross-examined in open court, in the presence of Respondent's officials and the attorneys who had previously interrogated them, on how they felt about Guild representation before the Respondent rejected the Guild. Even if Respondent would be required to accept the first answers of the witnesses, the Guild and the General Counsel would not, and cross-examination would then probe deeply into the question of how the witness had manifested a desire not to be represented, if that was his answer. Was it actually before April 19, or not; did he inform anyone else about his mental state? Attempts at impeachment might then follow. This process obviously would, without justification, infringe on employees' Section 7 rights. The fruits of it would also be unreliable because credibility findings would have to be made in many cases on whether or not the witness really did or did not want the Guild to represent him 4 months earlier. 38/

38/ This is not like asking an employee whether he signed a union card and what was said to him by the solicitor, when a union relies on cards as evidence of majority support. But even in those cases an (Continued)

Respondent's due process arguments here is also based on a number of false premises. The first is that by issuing a complaint charging Respondent with a violation of the Act by interrogating employees, General Counsel "chilled" Respondent's efforts to prepare its defense, but I have found this position untenable. The Respondent also argues that I should have granted its motion to dismiss that allegation so that it could start interviewing employees again, but because I did not, it was again prevented from preparing its defense, another position which I find to be logically unsupportable. On the basis of those premises, Respondent contended at the hearing that it was "shackled" and that its last alternative was to call all the employees as witnesses, for it had no other way of defending itself. This is not the fact, because nothing prevented Respondent from engaging in legal interviews with employees, and the law, as we have seen, permits an employer to poll his employees, if the poll is secret and other standards are met. 39/ Respondent chose not to poll its employees on the simple question of whether they wanted the Guild to represent them, and it also declined to accept my invitation to call any employee who could testify that he gave any evidence of Guild unacceptability to management prior to April 19.

It seems that what Respondent's due process contention really comes down to is that it has been prevented from coercively interrogating employees in an attempt to buttress its initial and shaky position that Respondent had reasonable grounds to believe that the Guild no longer represented a majority of employees on April 19, when recognition was withdrawn. I find that Respondent was not deprived of due process of law in this proceeding.

## IV. The Remedy

Having found that Respondent violated Section 8(a)(1) and (5) of the Act, I shall recommend that Respondent cease and desist from engaging in such unfair labor practices and from like or related unfair labor practices and to take certain affirmative actions which I find will effectuate the policies of the Act. I shall also recommend that Respondent bargain collectively, upon request, with the Guild as the exclusive bargaining representative of employees in the appropriate unit, and to embody any understanding reached in a signed agreement.

Upon the basis of the foregoing findings of fact and on the entire record in the case, I make the following:

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38/ (Continued) examination of an employee's subjective motivation is not permitted, and it is recognized that "employees are more likely than not, many months after a card drive and in response to questions by company counsel, to give testimony damaging to the union . . . ." N.L.R.B. v. Gissel Packing Co., 395 U.S. 575, 608.

39/ Struksnes, supra, n. 19; Taft Broadcasting, supra, n. 14.

Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of the Act.

2. The Guild is a labor organization within the meaning of the Act.

3. By refusing on or about April 19, 1973, and at all times thereafter, to meet and bargain with the Guild as the exclusive representative of employees in the appropriate unit, Respondent violated Section 8(a)(1) and (5) of the Act.

4. By coercively interrogating employees in the unit on May 21, 1973, without notice to the Guild, Respondent violated Section 8(a)(1) and (5) of the Act.

5. By unilaterally and without notice to and bargaining with the Guild, reducing unit employees' working hours, Respondent violated Section 8(a)(1) and (5) of the Act.

6. The aforesaid unfair labor practices affect commerce within the meaning of the Act.

Upon the foregoing findings of fact, conclusions of law, upon the entire record, and pursuant to Section 10(c) of the Act, I issue the following recommended: 40/

ORDER

Respondent, Retired Persons Pharmacy, t/a NRTA-AARP Pharmacy, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Unlawfully interrogating employees with respect to their union membership or activities or the membership or activities of others.

(b) Unilaterally and without notice to the Guild, changing hours of work of unit employees or any other term or condition of employment.

(c) Refusing to bargain with the Guild, upon its request, as the exclusive representative of the following appropriate bargaining unit:

40/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

All registered and/or graduate pharmacists at the Employer's Washington, D. C. location, excluding office clerical employees, all other employees, guards and supervisors as defined in the Act.

(d) In any like or related manner interfering with, restraining or coercing employees in the exercise of rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively with the Guild as the exclusive representative of the employees in the above-described appropriate unit and embody in a signed agreement any understanding reached.

(b) Post at its place of business in Washington, D. C., copies of the notice attached hereto and marked "Appendix B." 41/ Copies of said notice on forms to be furnished by the Regional Director for Region 5, shall, after being duly signed by an authorized representative of Respondent, be posted by Respondent immediately upon receipt thereof and maintained by it for a period of at least 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced or covered by any other material.

(c) Notify the Regional Director for Region 5, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

Dated at Washington, D. C.

George J. Bott
Administrative Law Judge

41/ In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX A

STATEMENT MADE BY ATTORNEY
TO EMPLOYEES

I am one of the attorneys representing NRTA. As you may recall, about 1 1/2 years ago there was an election conducted by the NLRB. Following the election, NRTA entered into a contract with the Guild of Pharmacists. I am advised by the management of NRTA that they do not feel that the Guild has the support of the pharmacists. I therefore would like to ask you a few questions to assist in the preparation of a defense to unfair labor practice charges filed by the Guild.

I want you to know that you are under no obligation to answer any of my questions or even to speak to me. I assure you that anything you tell me will not affect your job in any way, under any circumstances, and you are free to leave now.

92a

Name

How long have you been employed at NRTA ?

Are you a member of the Guild ?

When did you become a member ?

What did you do to become a member ?

Do you actively support the Guild ?

Are you presently paying monthly dues ?

How much are the dues ?

How do you pay these dues ?

To whom do you pay these dues ?

Were you paying dues in April 1973 ?

Were you paying dues before April 1973 ?

Were the dues ever increased ?

Have you ever received an assessment ?

When ?

What was the assessment for ?

How much was the assessment ?

Does the Guild hold regular meetings ?

How often are these meetings held ?

Have you ever attended any of these meetings ?

How often do you attend ?

Did you attend meetings in April 1973 ?

Did you attend meetings before April 1973 ?

Does the Guild send out regular communications to its members ?

What kind of communications are sent ?

Have you ever received any communications from the Guild ?

How many times ?

Did you receive communications before April 1973?

Who is the President of the Guild?

Who are the other officers?

Who is your shop steward?

Do you know where the Guild is located?

If so, what is the address?

What is the telephone number of the Guild?

Do you have a copy of the Guild's Constitution and By-laws?

Where is this copy?

When did you get the copy?

Have you ever read the Constitution and By-laws?

When did you read it last?

What are the various provisions of the Constitution that you remember?

Do you know the terms of your contract with NRTA?

Do you have a copy of the contract?

Did the Guild ever tell you about the contract?

If so, when?

Do you know when the contract expires?

Have you ever had a grievance handled by the Guild?

Was the grievance handled satisfactorily?

FORM NLRB-4727
(9-69)

# NOTICE TO EMPLOYEES

## POSTED BY ORDER OF THE
## NATIONAL LABOR RELATIONS BOARD
### AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT coercively interrogate employees about their union activities or membership or about the union activities or membership of other employees.

WE WILL NOT unilaterally and without notice to and or bargaining with the METROPOLITAN GUILD OF PHARMACISTS reduce hours or change other terms or conditions of employment.

WE WILL, upon request, bargain collectively in good faith with the Guild as the bargaining representative of all employees in the bargaining unit described below with respect to wages, hours and other terms and conditions of employment, and, if an understanding is reached, embody it in a signed agreement. The bargaining unit is:

> All registered and/or graduate pharmacists at our Washington, D. C. location, excluding office clerical employees, all other employees, guards and supervisors as defined in the National Labor Relations Act, as amended.

RETIRED PERSONS PHARMACY, t/a
NRTA-AARP PHARMACY

Dated _____ By _____
(Representative) (Title)

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, Room 1019, Charles Center, Baltimore, Maryland 21201 (Tel. No. 301 - 962-2822).

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

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|---|---|
| RETIRED PERSONS PHARMACY t/a NRTA-AARP PHARMACY, | |
| Respondent, | |
| -and- | |
| METROPOLITAN GUILD OF PHARMACISTS, | CASE NO. 5-CA-6108 |
| Charging Party | |

RESPONDENT'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

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Attorneys for Respondent
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New York, New York 10036
212 947-2000

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

| | | |
|---|---|---|
| RETIRED PERSONS PHARMACY, t/a NRTA-AARP PHARMACY, | : | |
| Respondent, | : | Case No. 5-CA-6108 |
| -and- | : | |
| METROPOLITAN GUILD OF PHARMACISTS | : | |
| Charging Party. | : | |

RESPONDENT'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

On October 30, 1973, Administrative Law Judge George J. Bott, issued his decision in the above-entitled matter. Retired Persons Pharmacy, t/a NRTA-AARP Pharmacy (Respondent herein) takes the following exceptions to the findings of fact, statements made, conclusions of law, opinions and inferences drawn by the Administrative Law Judge in his decision:

1. (p. 1)[1/] The erroneous statement that the findings of fact are based upon the entire record in the case and from the Administrative Law Judge's observation of the witnesses.

2. (p. 2,11. 29-31) The erroneous statement that a principal issue is whether Respondent's withdrawal of recognition from the Guild on April 19, 1973 was based on a reasonably grounded doubt that the Guild no longer represented a majority of unit employees.

3. (p. 2 11. 33-35) The erroneous statement that a principal issue is whether Respondent violated the Act by interrogating unit employees on May 21, 1973, for the purpose of preparing a defense to the refusal to bargain charge.

1/ The page, footnote and line numbers which precede the exceptions refer to the respective pages, footnotes and lines of the Administrative Law Judge's Decision.

4. (p. 3, ll. 14-16). The erroneous finding that there were no substantial changes in the composition of the unit during the life of the contract.

5. (p. 3, ll. 16-19). The erroneous finding that no substantial changes is evident from a comparison of the Excelsior list supplied to the Board in connection with the election, and a list of employees in the unit on April 19, 1973.

6. (p. 3, ll. 19-21). The erroneous finding that 24 employees out of 28 in the unit were employed when the election was held and remained employed on April 19, 1973.

7. (p. 3, ll. 23-25). The erroneous finding that the Guild and its members remained active to Respondent's knowledge during the life of the contract.

8. (p. 3,ll 25-26). The erroneous finding that Paul Woods testified without contradiction.

9. (p. 3, ll. 25-28). The erroneous finding that Paul Woods handled a number of grievances with Supervisor Brault, and one with Manager Altman during the life of the agreement.

10. (p. 3 l.29) The erroneous finding crediting the testimony of two employees who were members of the Board of Directors.

11. (p. 3, ll. 28-30). The erroneous finding that two employees who were members of the Guild's Board of Directors and unit employees participated in many Guild meetings on and off Respondent's premises.

12. (p. 3, ll. 31-33). The erroneous finding that during the life of the contract, at least six meetings, generally attended by approximately 20 unit employees, were held on Respondent's premises during lunch or break periods.

13. (p. 3, ll. 35-37). The erroneous finding that on March 7, 1973, the Guild notified Respondent's attorney of its intent to terminate the agreement at its expiration date and to modify certain of its terms through collective bargaining.

14. (p. 3, 11. 37-38). The unwarranted implication contained in the Administrative Law Judge's finding that further correspondence took place before the meeting of Lewis and Lechner on April 19,1973.

15. (p. 3, 11. 45-46). The erroneous finding of "viability" and Respondent's awareness of it and that these are based on the testimony of employees Woods and Meszaros.

16. (p. 3, 1. 46). The erroneous finding crediting the testimony of employees Woods and Meszaros.

17. (p. 4, 1.4). The erroneous finding that Lechner opposed Lewis' intention to file a petition with the Board for a new election.

18. (p. 4, 11. 4-7). The erroneous finding that Lechner asked Lewis what evidence the Employer had to support its belief and that Lechner received no response.

19. (p. 4, 1. 5). The erroneous finding crediting Lechner's testimony.

20. (p. 4, 11. 10-11). The gratuitous and unwarranted statement that the representation petition filed by the Respondent with the Board on April 20, 1973 was not accompanied by any evidence to support its expressed belief that the Guild no longer had majority support.

21. (p. 4, 11 11-13). The erroneous finding that on May 2, 1973, the petition was dismissed as untimely, since it was filed during the insulated period of the contract.

22. (p. 4, 11. 31-33). The unwarranted inference of illegality that the employees were interviewed after having been summoned from their stations by a management representative.

23. (p. 4, 11. 42-44). The erroneous finding that sometime in early May, 1973 Respondent's officials "decided" to reduce the workweek of unit employees by 2 hours.

24. (p. 5, 11. 8-10). The erroneous finding that the Guild was sufficiently active, and that Respondent knew of it.

25. (p. 7,1. 35). The erroneous finding discrediting Altman's testimony.

26. (p. 7 l. 36). The erroneous finding that the Guild was not dormant.

27. (p. 7, l. 36). The failure to find that Altman had reason to believe the Guild was dormant.

28. (p. 7, ll. 36-37; p. 8, n. 9, l. 43-44). The erroneous finding, and the erroneous reliance in support thereof, on the case of Convair Division of General Dynamics Corporation, 169 NLRB 131, that there is no evidence of substantial change in the unit upon which Respondent can rely.

29. (p. 7, n 8, l. 49). The erroneous finding that Meszaros and Woods were persuasive on the question of Guild's dormancy.

30. (p. 7, n. 8, ll 52-53). The erroneous finding of Guild's activity in the pharmacy.

31. (p. 8, ll. 12-17). The erroneous finding that the evidence found in the remarks of at least six employees who spoke with Brault is not sufficient to overturn the Guild's presumption of continued majority support and that the statements are not clear or firm enough indications that the employee did not want the Guild to represent him as to reasonably justify to Respondent that such was the case.

32. (p. 8, l. 19). The erroneous finding that Brault was unable to fix the time he spoke with Campbell.

33. (p. 8, ll. 20-21). The erroneous finding that Campbell's comments amount to no more than a criticism of what she thought was unfair treatment of employee Kim by Guild members.

34. (p. 8, ll. 22-23). The erroneous finding that Johnson merely asked Brault something "to the effect," whether Respondent could get the Guild "off Kim's back."

35. (p. 8, l. 23-26). The erroneous finding that the speaker wanted to be represented by the Guild.

36. (p. 8, ll. 23-26). The failure to find in either Campbell's or Johnson's statements of disagreement with Guild

member action, a clear indication that the speaker did not want to be represented by the Guild.

37. (p. 8, ll. 26-27, p. 8, ll. 12, l. 48). The erroneous conclusion and the erroneous reliance in support thereof on Gulf Machinery Co., 175 NLRB, 410, 413, that disagreement in the policies of a representative does not mean that one has abandoned support of that representative.

38. (p. 8, ll. 29-31). The unwarranted inference that supervisors reported to Brault that Guild members were talking to fellow employees in the unit, and that Brault approached some of these employees and questioned them.

39. (p. 8, ll. 34-35). The unwarranted inference that Brault engaged Lewis and Testamark in possible improper questioning.

40. (p. 8, ll. 35-36). The erroneous finding that Lewis avoided the main thrust of Brault's question.

41 (p. 8, ll. 36-38). The erroneous finding that Lewis' and Testamark's responses did not rise to the level of evidence which would reasonably support a belief that they did not desire Guild representation.

42. (p. 8, ll. 36-38). The failure to find that Lewis' and Testamark's responses rose to the level of evidence which would reasonably support a belief that they did not desire Guild representation.

43. (p. 8, ll. 38-40; p. 9, ll. 1-2). The erroneous finding that not "bothering with" or having "no time" for the Guild are equivocal statements which can be interpreted as meaning "no time" for active support, such as attendance at Union meetings

or payment of dues rather than as not desiring representation at all.

44. (p. 9, ll. 2-3). The erroneous finding that asking employee Goldman if the Guild was "bothering him" is not the same as asking whether he wanted to be represented by the Guild.

45. (p. 9, ll. 4-7). The erroneous conclusion that Goldman's statement that he had no "use for the Guild" is robbed of any probative value because Brault characterized it as being "basically" what the employee stated.

46. (p. 9, l. 11-13). The unwarranted inference that Brault was unable to fix the time when Wolf complained to Brault.

47. (p. 9, l. 13). The erroneous finding that the dates of Wolf's criticisms of Guild activity are uncertain.

48. (p. 9, ll. 14-16). The erroneous conclusion that Wolf's criticism of Guild activity does not constitute probative evidence fairly showing that Wolf did not want the Guild to represent him for the purpose of collective bargaining.

49. (p. 9, ll. 18-19). The erroneous finding that the evidence is insufficient to overcome the presumption of continued majority support.

50. (p. 9, ll. 19-22). The erroneous finding that in at least six of the instances of conversations with employees about the Guild, the evidence does not meet the Board's standard of objective considerations sufficient to support a reasonable doubt of the Guild's majority.

51. (p. 9, ll. 22-26). The erroneous finding that the Respondent did not in good faith believe that the Guild had lost its majority even if the other 8 employees in the unit of 28 who

talked to Brault had withdrawn their support from the Guild and clearly stated such to Respondent's officials.

52. (p. 9, ll. 22-24). The failure to find that Respondent in good faith believes that the Guild had lost its majority.

53. (p. 9, ll. 29-31). The erroneous statement that Respondent polled employees to determine whether the Guild in fact represented a majority of employees.

54. (p. 9, n. 13 l. 40). The erroneous reliance on Davis v. Hemphill, Inc., 177 NLRB 282, 285.

55. (p. 9, n. 14, ll. 41-42). The erroneous finding that Brault did not mention the "lists" of employees who were "for," "against," or "in between."

56. (p. 9, n. 14, l. 42). The erroneous finding that the "lists" were not produced.

57. (p. 9, n. 14, ll. 44-45). The erroneous finding that Altman's testimony raises a question.

58. (p. 9, n. 14, ll. 44-46). The erroneous inference that "even on Brault's 'lists' there were some persons 'in between," and no majority indicated as 'against.'"

59. (p. 9, n. 14, ll. 45-50). The erroneous reliance on the case of Taft Broadcasting, WDAF-TV, AM-FM, 201 NLRB No. 113, 82 LRRM 1338, and the erroneous conclusion that in that case the Board noted that a secret poll of employees, which the employer took, which showed the employees evenly split on the question of union support, only weakened the presumption of majority support.

60. (p. 10, ll. 1-2). The erroneous finding that Respondent's arguments in support of its "interrogation" tend to overlap or even merge.

61. (p. 10, l. 2). The erroneous implication that Respondent conducted an interrogation of unit employees.

62. (p. 10, ll. 5-7). The erroneous finding that Respondent admittedly had no independent evidence that the Guild, in fact, no longer enjoyed majority support.

63. (p. 10, ll. 7-9). The erroneous finding that confusion is engendered by Respondent's reliance on the principle that Respondent is entitled to prepare a defense to an unfair labor practice charge.

64. (p. 10, ll. 11-12). The erroneous finding that on May 21, Respondent's attorneys questioned unit employees about their membership and activities in the Guild.

65. (p. 10, ll. 10-13). The erroneous finding that on May 21, Respondent's attorneys were conducting a non-secret poll or survey.

66. (p. 10, ll. 12-13). The erroneous finding that Respondent conducted a "poll" or "survey" intended to gather evidence to support an alternative contention.

67. (p. 10, ll. 24-36; p. 9, n. 19, ll. 48-52). The erroneous reliance on the case of Struksnes Construction Co., 165 NLRB 1062, 1063, and other cases cited.

68. (p. 11, ll. 1-2). The erroneous finding that Respondent's attorneys conducted a poll of employees and that it was defective on two grounds.

69. (p. 11, ll. 2-3). The erroneous finding that the "poll" was not secret because each employee was asked to state

his or her name before the interview began.

70. (p. 11, ll. 3-4). The erroneous finding that the purpose of the "poll" was not communicated to employees.

71. (p. 11, ll. 4-6). The erroneous finding that the only legitimate purpose of such a "poll" is to determine whether employees wish a union to continue as their representative.

72. (p. 11, ll. 11-12). The erroneous finding that the few questions asked by the attorneys were far from being a simple statement of the question.

73. (p. 11, l. 13). The erroneous conclusion that the reference to "a defense to unfair labor practices" was unclear.

74. (p. 11, ll. 14-15). The erroneous finding that the interviewer asked numerous questions and that this could only serve to blur the issue further.

75. (p. 11, ll. 15-17). The erroneous conclusion, and the erroneous reliance on Struksnes in support thereof, that the "poll" was coercive and a violation of Section 8(a)(1) of the Act.

76. (p. 11, ll. 26-28). The erroneous conclusion that the cases upon which Respondent relies do not apply as a matter of principle or are factually distinguishable.

77. (p. 11. 26-28). The failure to find that the cases upon which Respondent relies are applicable.

78. (p. 11, ll. 42-44). The unwarranted inference that the Board, in summarizing its policy of permitting interviewing of employees in order to determine whether recognition should be granted, relied on Blue Flash Express, Inc., 109 NLRB 591.

79. (p. 12, 11. 1-3). The erroneous inference that the Respondent relied on a case which has already been modified.

80. (p. 12, 11. 3-4). The erroneous finding that the "poll" conducted by Respondent's attorney was non-secret.

81. (p. 12, 11. 4-6). The erroneous finding that it cannot be made less of a "poll" by attempting to squeeze it under the principle covering the second situation, preparation for trial, and that it does not fit there.

82. (p. 12, 11. 6-8). The erroneous opinion that Respondent is attempting to improperly blend principles designed to cover different kinds of cases in order to legitimatize its "poll."

83. (p. 12, 11. 8-12). The erroneous inference that Struksnes is applicable in this case.

84. (p. 12, 11. 15-18). The erroneous finding that the questions in the questionnaire exceeded the "area of permissible inquiry."

85. (p. 12, 11. 21-27). The unwarranted inference that under the Johnnie's Poultry rule, not only must the employer communicate the purpose of the questioning to the employees, assure them against reprisals and obtain their cooperation, on a voluntary basis, but the question must not exceed the necessities of the legitimate purpose by prying into other union matters, eliciting information concerning an employee's subjective state of mind, or otherwise interfering with the statutory rights of employees.

86. (p. 12, n. 25, 11. 45-48). The unwarranted inference that in Mays Department Stores Co., 70 NLRB 94, 95, the Board, in addition to the restrictions laid down in Johnnie's

Poultry held that the "interrogation" must not "discuss the nature or extent of union activity."

87. (p. 13, ll. 11-14). The erroneous conclusion, that the only relevant inquiry in interviews designed to determine whether it continued to have majority support in fact was "do you wish the (Guild) to represent you for purposes of collective bargaining?"

88. (p. 13, ll. 15-17). The erroneous finding that the interviewer attempted to explore almost every other area of employee union activity.

89. (p. 13, l. 17). The erroneous finding that all the questions in the questionnaire fail the test of relevancy.

90. (p. 13, ll. 19-21). The erroneous finding that the questionnaire is defective and that it delves into the union activities of employees, their fellow employees and possible non-employee members or officers of the Guild.

91. (p. 14, ll. 1-2). The erroneous finding that other questions are irrelevant as a matter of law.

92. (p. 14, ll. 1-2). The unwarranted implication that the right question had not been asked.

93. (p. 14, ll. 2-4; p. 14, n. 33, ll. 27-28). The erroneous finding and the erroneous reliance in support thereof on the cases of Terrell Machine Co., and Barrington Plaza and Tragniew Inc., 185 NLRB 962, 963, that the questions about membership and dues are irrelevant because there is no necessary correlation between these items and the number of union supporters.

94. (p. 14, ll. 6-10). The erroneous finding that some of the questions are improper and that they probe into

matters which involve the subjective state of mind of the employee.

95. (p. 14, ll. 13-15). The erroneous finding that every inquiry is so remote from the issue in the case as to have no probative value in determining the question of whether the Guild enjoyed continued majority support.

96. (p. 13, ll. 26-31). The erroneous finding that the inquiries suggest an attempt to undermine the Guild's status as collective bargaining representative rather than a legitimate effort to prepare for trial and that they disregard the "delicate balance" that must be observed in a "carefully conducted" investigation.

97. (p. 13, n. 30, l. 36). The erroneous reliance on Terrell Machine Co., 173 NLRB 1480.

98. (p. 13, n. 31, ll. 40-42). The erroneous finding that the amendment is factually supported by many of the questions in the written questionnaire.

99. (p. 13, n. 32, ll. 43-47). The erroneous finding that the inquiries suggest that the questionnaire was designed to discover support for Respondent's position that it believes the Guild to be inactive and that this was an "objective consideration" supporting its belief that the Guild did not represent a majority.

100. (p. 14, ll. 17-22). The erroneous finding that these inquiries delve into extraneous matters.

101. (p. 14, ll. 22-24, n. 34, l. 29). The erroneous conclusion, and the erroneous reliance in support thereof on the case of Joy Silk Mills v. NLRB, 185 F. 2d, 732, that "the evidence which could be garnered from that questioning

would be of so little probative value as not to warrant the risk of infringing upon employee rights."

102. (p. 14, n. 34, ll. 29-34). The erroneous opinion that Respondent's counsel's arguments asserting relevancy is unimpressive and makes the interrogatories more offensive.

103. (p. 14, n. 34, ll. 34-48). The erroneous conclusion that counsel was engaging in a form of cross-examination, conducting a kind of a lie detector test, and that the evidence obtained therefrom is not the kind of clear evidence that must be presented to show that a union does not represent a majority in fact.

104. (p. 14, n. 34, ll. 48-50). The erroneous finding that the inquiries took a patently unfair advantage of employees who might have in fact desired continued representation by the Guild.

105. (p. 15, ll. 1-3). The erroneous finding that Respondent's "interrogation" was wide ranging, mostly irrelevant, delving deeply not only into employee states of mind but into their most intimate activities with respect to the Guild.

106. (p. 15, ll. 3-5). The erroneous finding that it exceeded the limitations laid down in the cases and that it violated Section 8(a)(1) of the Act.

107. (p. 15, ll. 11-13). The erroneous finding that Respondent's refusal to bargain with the Guild was not predicated on a good faith and reasonably grounded doubt of the Guild's continued majority status.

108. (p. 15, ll. 11-13). The failure to find that Respondent's refusal to bargain with the Guild was predicated on a good faith and reasonably grounded doubt of the Guild's continued majority status.

109. (p. 15, 11. 13-15). The erroneous finding that Respondent's "interrogation" of employees was a violation of the Act and not a permissible effort to prepare a defense to the refusal to bargain charge.

110. (p. 15, 11. 15-16). The erroneous conclusion that Respondent violated Sec. 8(a)(1) and (5) of the Act.

111. (p. 15, 11. 16-20). The erroneous finding that on May 21, 1973, the Respondent interrogated its employees in the appropriate unit with regard to their membership and activities and the activities of others on behalf of the Guild.

112. (p. 15, 11. 22-24). The erroneous finding that by changing the hours of unit employees from 42 hours to 40 hours Respondent violated Sec. 8(a)(5) and (1) of the Act.

113. (p. 15, 1. 45). The Respondent excepts to the denial by the Board of its motion for protective order or order of severance.

114. (p. 15, 11. 45-46). The Respondent excepts to the denial by the Board of its request to appeal the ruling.

115. (p. 15, 11. 47-48). The unwarranted inference that counsels interrogated employees and that this violated the Act.

116. (p. 15, 1. 37; p. 16, 1. 1). The erroneous finding that Respondent's due process contention is without merit.

117. (p. 16, 11. 1 - 2). The erroneous conclusion that General Counsel's amended complaint did not allege that any legitimate polling or interviewing of employees was illegal.

118. (p. 16, 11. 3-5). The erroneous conclusion that Respondent was "free with assistance of competent counsel, to make an informal judgment with respect to what interviewing would be

proper under the cases."

119. (p. 16, 11. 5-6). The erroneous conclusion that Respondent cannot shift the responsibility for any failure on its part to prepare its defense to the General Counsel.

120. (p. 16, 1. 7). The erroneous implication that Respondent's past conduct was illegal.

121. (p. 16, 11. 7-11). The erroneous conclusion that the General Counsel, acting under the provisions of the Act, has a "responsibility for making legal judgments with respect to conduct charged to be a violation of the Act equal at least to counsel's obligation to adequately prepare a defense for trial."

122. (p. 16, 11. 14-17). The erroneous conclusion that the initial responsibility of the General Counsel to make judgment may not be "chilled" or "inhibited" by counsel's fears that if he engages in proper preparation for trial in his contacts with employees General Counsel may erroneously complain about it.

123. (p. 16, 11. 38-39). The erroneous finding that the interviews on May 21st were coercive.

124. (p. 16, n. 36, 11. 47-49). The unwarranted statement that it is "not clear just what additional interviewing Respondent claims it would have engaged in if General Counsel had not amended his complaint."

125. (p. 16, n. 36, 11. 49-51). The erroneous finding that Respondent had exhaustively interviewed all willing employees on May 21st and that if it repeated those interviews the employees would respond in the same fashion.

126. (p. 17, 11. 1-2). The Respondent excepts to the denial by the Administrative Law Judge of its motion to dismiss.

127. (p. 17, 11. 5-6). The Respondent excepts to the advice by the Judge to counsel that he would not permit those inquiries.

128. (p. 17, ll. 12-15). The erroneous finding that counsel had no facts in his possession to support his offer of proof that a "majority of the employees would indicate and would testify...that on the 19th of April they did not support the Union and were not members of the Union."

129. (p. 17, ll. 17-18). The erroneous finding that Respondent had no information on the majority in fact issue other than that gathered in the interviews.

130. (p. 17, ll. 18-20). The erroneous finding that any data obtained from Respondent's "interrogation" was tainted and unreliable and that it was illegal.

131. (p. 17, ll. 20-23). The erroneous finding that there is no evidence that a majority of employees interviewed indicated that they did not want the Guild to represent them and that they were not even asked that question.

132. (p. 17, ll. 23-25). The erroneous finding that counsel had no factual basis to support his offer.

133. (p. 17, ll. 27-29). The erroneous finding that counsel was proposing a fishing expedition.

134. (p. 17, ll. 30-32). The erroneous finding that the investigation was coercive and that anything that could result from it was unreliable.

135. (p. 17, ll. 34-45). The erroneous finding that the process of examination and cross-examination in open court would infringe on employees' Section 7 rights.

136. (p. 17, ll. 45-48). The erroneous conclusion that "the fruits of it would be unreliable because credibility

findings would have to be made in many cases on whether or not the witness really did or did not want the Guild to represent him 4 months earlier."

137. (p. 17, n. 38, ll. 51-53). The erroneous statement that this is not like asking an employee whether he signed a union card and what was said to him by the solicitor, when a union relies on cards as evidence of majority support.

138. (p. 18. ll. 1-2). The erroneous finding that Respondent's due process arguments is based on a number of false premises.

139. (p. 18, ll. 2-5). The erroneous finding that Respondent's argument stating that General Counsel "chilled" Respondent's efforts to prepare its defense because of a complaint is untenable.

140. (p. 18, ll. 5-9). The erroneous finding that Respondent's argument that it was prevented from preparing its defense is logically unsupportable.

141. (p. 18, l. 12). The erroneous finding that Respondent was not "shackled."

142. (p. 18, ll. 12-13). The erroneous finding that nothing prevented Respondent from engaging in legal interviews with employees.

143. (p. 18, ll. 13-15). The unwarranted implication contained in the statement that the law permits an employer to poll his employees, if the poll is secret and other standards are met.

144. (p. 18, ll. 15-17). The erroneous finding that Respondent chose not to "poll" its employees on the simple question of whether they wanted the Guild to represent them.

145. (p. 18, ll. 17-19). The unwarranted inference that Respondent declined to accept an invitation of the Judge to call any employee who could testify that he gave any evidence of Guild unacceptability to management prior to April 19.

146. (p. 18, ll. 21-26). The erroneous finding that Respondent's due process contention amounts to saying that it has been prevented from coercively interrogating employees and that it attempted to buttress its "initial and shaky position" that Respondent had reasonable grounds to believe that the Guild no longer represented a majority of employees on April 19th.

147. (p. 18, ll. 26-27). The erroneous finding that Respondent was not deprived of due process of law in this proceeding.

148. (p. 18, ll. 31-32). The erroneous finding that Respondent violated Section 8(a)(1) and (5) of the Act.

149. (p. 18, ll. 32-35). The Respondent excepts to the recommendation that it cease and desist from engaging in "such unfair labor practices and from like or related unfair labor practices and to take certain affirmative actions which I find will effectuate the policies of the Act."

150. (p. 18, ll. 35-38). The Respondent excepts to the recommendation that it "bargain collectively, upon request, with the Guild as the exclusive bargaining representative of employees in the appropriate unit, and to embody any understanding reached in a signed agreement."

151. (p. 18, ll. 40-41). The Respondent excepts to the erroneous statement that the conclusions of law are based upon the "foregoing findings of fact" and on the entire record in the case.

152. (p. 19, 11. 9-23). The Respondent excepts to the erroneous "Conclusions of Law" numbered 3-6.

153. (p. 19, 11. 29-45; p. 20, 11. 1-7). The Respondent excepts to the "order" that it cease and desist from activities enumerated in number 1, paragraph (a) - (d).

154. (p. 20, 11. 9-30). The Respondent excepts to the "order" that the Employer take affirmative action as set forth in number 2, paragraph (a) - (c).

155. The Respondent excepts to the Appendix entitled "Notice to Employees" and excepts to the posting of said notice.

THE RESPONDENT EXCEPTS TO THE FOLLOWING RULINGS OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge's overruling the Respondent's objections appearing in the record on the following pages:

p. 37, 11. 2-4; p. 64, 11. 20-25; p. 66, 11. 20-22.

The Administrative Law Judge's sustaining of the objections of the General Counsel and the Charging Party appearing in the record on the following pages:

p. 114, 11. 14-15; p. 133, 1. 4; p. 135, 11. 2-8; p. 137, 1. 9; p. 142, 11. 10-11; p. 152, 1. 7; p. 156, 11. 11-16; p. 157, 11. 3-4; p. 165, 1. 25; p. 183, 11. 8-9; p. 187, 1. 18; p. 188, 1. 10; p. 198, 11. 10-12; p. 215, 11. 23-24; p. 229, 11. 12-13; p. 231, 1. 7.

The granting by the Administrative Law Judge of the amendment to the complaint in regard to paragraph 3 (p. 9, 11. 1-6).

116a

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MARTIN L. RATSON

G. HARRISON BARRY
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ROGER S. KAPLAN
ARTHUR R. KAUFMAN
DAVID I. KREITZMAN
RICHARD N. CUDLIN
PEGGY L. PHADEN
PHILIP S. HORTENSEN
ROBERT J. GIOVANNETTI

December 19, 1973

RM. 1151 – 11 AM

John Truesdale, Esq.
Executive Secretary
National Labor Relations Board
1717 Pennsylvania Avenue, N.W.
Washington, D.C. 20570

RECEIVED
DEC 20 1973
Office of
Appeals

Re: Retired Persons Pharmacy,
t/a NRTA-AARP Pharmacy
and
Metropolitan Guild of Pharmacists
Case No. 5-CA-6108

Dear Sir:

Pursuant to Section 102.46(i) of the Rules and Regulations of the National Labor Relations Board, series 8, as amended, request is hereby made for permission to orally argue the Pharmacy's position in the above-matter before the Board.

This case primarily involves the right to representation by counsel and the application of Board precedent in challenging the majority status of an incumbent union.

I believe that these issues are of sufficient importance to warrant the Board's consideration in oral argument.

Copies of this request have been mailed this day to the following interested parties: Ira M. Lechner, Esq., 3244 Prospect Street, N.W., Washington, D.C. and Edwin S. Hopson, Esq., National Labor Relations Board, Region 5, Room 1019 Federal Bldg., Charles Cente Baltimore, Maryland 21201.

Very truly yours,

JACKSON, LEWIS, SCHNITZLER & KRUPMAN

Robert Lewis

RL:jl

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December 19, 1973

RM. 1151 – 11 AM




John Truesdale, Esq.
Executive Secretary
National Labor Relations Board
1717 Pennsylvania Avenue, N.W.
Washington, D.C. 20570

Re: Retired Persons Pharmacy,
t/a NRTA-AARP Pharmacy
and
Metropolitan Guild of Pharmacists
Case No. 5-CA-6108

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Very truly yours,

JACKSON, LEWIS, SCHNITZLER & KRUPMAN

Robert Lewis

RL:jl

MFJ

D--8549
Washington, D.C.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

RETIRED PERSONS PHARMACY,
t/a NRTA-AARP PHARMACY

and

Case 5--CA--6108

METROPOLITAN GUILD OF PHARMACISTS

DECISION AND ORDER

On October 30, 1973, Administrative Law Judge George J. Bott issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, 1/ and General Counsel filed a memorandum in reply to Respondent's exceptions and brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions 2/ of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order

1/ The Respondent has requested oral argument. This request is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

2/ We agree with the Administrative Law Judge that the nonsecret poll conducted by the attorneys for Respondent violated Sec. 8(a)(1) of the Act, whether conducted for the purpose of testing the Union's continued status as majority representative of the employees herein or as part of Respondent's preparation for trial. With respect to the latter aim, we agree with the Administrative Law Judge for the reasons stated by him that the inquiries in the questionnaire used by Respondent's (continued)

of the Administrative Law Judge and hereby orders that Respondent, Retired Persons Pharmacy, t/a NRTA-AARP Pharmacy, Washington, D.C., its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

Dated, Washington, D.C. APR 30 1974

Edward B. Miller, Chairman

John H. Fanning, Member

Howard Jenkins, Jr., Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

2/ attorneys far exceeded the "area of permissible inquiry." As for the use of the same questionnaire to determine whether the Union continued to enjoy majority support, we find that, in the circumstances of this case, the Respondent had no reasonable basis for doubting the Union's continued majority status at the time it refused to bargain with the Union and denied it further recognition, and therefore, could not, after taking such action, rely on evidence of employee dissatisfaction disclosed through the expediency of a poll of its employees, whether or not such was conducted in accordance with Strucksnes standards. An employer may not withdraw from a bargaining relationship without adequate objective evidence to justify its action, and thereafter utilize a poll, the results of which may well have been skewed by the employer's own unlawful withdrawal of recognition, to attempt to justify that self-same unlawful withdrawal. Such a "bootstrap" defense is not, in our view, well founded.

PART II

STENOGRAPHIC TRANSCRIPT OF TESTIMONY TAKEN BEFORE ADMINISTRATIVE LAW JUDGE GEORGE J. BOTT, ON AUGUST 14 AND 15, 1973

CNTR

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Region 5

| | | |
|---|---|---|
| In the Matter of: | : | |
| RETIRED PERSONS PHARMACY, t/a NRTA-AARP PHARMACY, Respondent, -and- | : | Case No. 5-CA-6108 |
| METROPOLITAN GUILD OF PHARMACISTS, Charging Party. | : | |

Hearing Room 500
Postal Rate Commission
2000 L Street, N. W.
Washington, D. C.

Tuesday, August 14, 1973

The above-entitled matter came on for hearing, pursuant to Notice, at 10 a.m.

BEFORE:

The Hon. GEORGE J. BOTT, Administrative Law Judge.

APPEARANCES:

| | |
|---|---|
| ROBERT LEWIS<br>G. HARRISON DARBY<br>PEGGY L. BRADEN | [Jackson, Lewis, Schnitzler & Krupman] 11 West 42nd Street, New York, N.Y., 10036; appearing on behalf of the Respondent. |
| IRA M. LECHNER | 3244 Prospect Street, N.W., Washington, D.C. 20007; appearing on behalf of the Charging Party. |
| EDWIN S. HOPSON | NLRB Regional Office, 1019 Federal Building, Baltimore, Maryland 21201; appearing as counsel for the General Counsel. |

# C O N T E N T S

| WITNESSES: | DIRECT | CROSS | REDIRECT | RECROSS |
|---|---|---|---|---|
| Iran M. Lechner | 13 | 43 | 58 | |
| John Meszaros | 57 | 77 | | |
| Paul H. Woods | 86 | 98 | | |
| Robert Altmann | 100 | | | |
| Robert Lewis | 102 | | | |
| John R. McHugh | 107 | 115 | | |
| Robert Altmann (recalled) | 115 | | | |

| EXHIBITS: | FOR IDENTIFICATION | IN EVIDENCE |
|---|---|---|
| General Counsel's: | | |
| 1(a)-(s) | 5 | 5 |
| 2 | 11 | 12 |
| 3 | 12 | 12 |
| 4 | 15 | 16 |
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P R O C E E D I N G S

10:20 a.m.

JUDGE BOTT: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of NRTA-AARP Pharmacy and Metropolitan Guild of Pharmacists, Case No. 5-CA-6108.

The Administrative Law Judge conducting this hearing is George J. Bott.

Will counsel or other representatives please state their appearances for the record? For the General Counsel?

MR. HOPSON: Edwin F. Hopson.

JUDGE BOTT: For the Charging Party?

MR. LECHNER: Ira M. Lechner.

JUDGE BOTT: For the Respondent?

MR. DARBY: The firm of Jackson, Lewis, Schnitzler & Krupmam, by G. Harrison Darby, Mr. Robert Lewis and Ms. Peggy Braden.

JUDGE BOTT: At the moment, Mr. Darby, you are the only member of that firm present; is that correct?

MR. DARBY: Yes, that is correct, sir. Mr. Lewis is due to arrive at any moment.

JUDGE BOTT: I think it would be a good idea, General Counsel, for you to offer your formal exhibits first and we will see where we are going.

MR. HOPSON: I offer General Counsel's Exhibit No. 1(a)

through 1(s), 1(s) being an Index and Description of the formal documents, into evidence. The parties have been shown the formal papers, Your Honor.

JUDGE BOTT: Are there any objections?

MR. DARBY: No objec tion.

JUDGE BOTT: General Counsel's 1(a) through 1(s) are admitted into evidence.

(The above documents were marked General Counsel's Exhibits Nos. 1(a) thru 1(s) for identification and were received in evidence.)

Do you have any other pleadings? I understand the Board denied an appeal of Respondent. Shouldn't that be an exhibit?

MR. HOPSON: That is our understanding as well, Your Honor. However, we have not received the telegraphic order that was sent out at this point of time. I understand that counsel for Respondent has also been advised that the request was denied.

MR. DARBY: I had spoken to Mr. Hopson about this before the trial commenced and both Mr. Hopson and myself have called the Board yesterday, late yesterday afternoon. We were advised, I was advised that the telegram was sent out on Friday denying our request for special permission to appeal to the Board. However, we have not received by close of business yesterday, that telegram, that I am aware of.

JUDGE BOTT: All right. That was an appeal from Judge Leff's ruling?

MR. DARBY: That is correct, sir.

JUDGE BOTT: On the respondent's motion for a protective order or Order of Severance and Direction of Immediate Hearing. That is what you were appealing from and the Board has denied the appeal. All right.

One other thing, in looking through the pleadings rapidly, I don't see an answer.

MR. HOPSON: There should be one in there, Your Honor. There was a motion for an extension of time to file the answer. It should be 1(j).

JUDGE BOTT: Mr. Hopson, you may continue.

MR. HOPSON: Your Honor, I would like to amend the Complaint in the following respects: 1) change the name of Respondent from "NRTA-AARP Pharmacy" to "Retired Persons Pharmacy, t/a NRTA-AARP Pharmacy."

As the second amendment, I would like to substitute the following paragraph for paragraph 5, so that the new paragraph would read: "On November 29, 1971, the Regional Director for Region 5 of the Board, on behalf of the Board, in case No. 5-RC-7782, certified the Guild as the collective bargaining representative for all registered and/or graduate pharmacists employed by the Employer at its Washington, D.C., location, but excluding office clerical employees, all other

employees, guards and supervisors as defined in the Act."

As to the third amendment, delete the semicolon at the end of paragraph 8(b) and add the following: ", and with regard to other employees' membership in and activities on behalf of the Guild;".

JUDGE BOTT: Mr. Darby, do you have any objection?

MR. DARBY: Your HOnor, in regards to General Counsel's amendment No. 1, it is my understanding, and I have just checked this with the company, the official corporate name of the company is "Retired Persons Pharmacy." There is no "trading as NRTA-AARP Pharmacy" in the corporate name. I would request that it be limited to "Retired Persons Pharmacy" which is the official name of the company.

MR. HOPSON: The purpose of the "trading as" is due to the fact that the collective bargaining agreement entered into by the parties in this case, the original certification in this case, and many other documents refer to "NRTA-AARP Pharmacy" as the correct legal name of the company. So that is the reason for the "trading as".

Your Honor, if I might also make one other point, there has been a request for 10(j) relief in this case. It has not been acted upon. If we were to go into District Court, I think things would be a lot clearer if we had this "trading as" phrase after the name, since there are so many documents still that way.

JUDGE BOTT: I am going to leave it in the name, Mr. Darby, but I will accept your statement that as far as the corporations papers are concerned they don't list this name as part of the official title. If the public knows of it that way, if certain documents do show that appellation, I will leave it in for whatever it is worth to help obviate the confusion. I think if you will look at part of the premises of the Employer, you will see "NRTA" written on one of the doors.

MR. DARBY: I will accept your statement, Your Honor.

JUDGE BOTT: It is on the dock so that those that come to deliver merchandise would know where to deliver it.

In any way, these names in pleadings are also "known as" so there is no harm or prejudice to anyone.

Do you have any objection, I assume you don't Mr. Darby, to the unit? This meets your answer?

MR. DARBY: That is correct. The amendment requested in paragraph 2 is correctly stating the unit description certified by the Board.

As to paragraph 3, we are opposing the amendment to the Complaint in regard to paragraph 3.

JUDGE BOTT: On what grounds?

MR. DARBY: It will be brought up at a subsequent time, Your Honor. I would request that this be deferred until that point.

JUDGE BOTT: I am granting it. I read most of the pleadings. General Counsel put you on notice that he was going to amend and I see no reason at this time to deny it. That motion is granted and paragraph 8(b) is amended as indicated in the General Counsel's motion, a copy of which has been handed to you.

Do you have any other preliminary matters?

MR. HOPSON: Nothing other than an opening statement, Your Honor.

JUDGE BOTT: Does the Respondent have any preliminary matters?

MR. DARBY: Not at this time, Your Honor.

JUDGE BOTT: I will be glad to hear your opening statement.

MR. HOPSON: This is a rather simple case on the facts and I believe on the law as well, where an employer is refusing to meet and bargain with a certified union which has made a proper and timely demand for negotiations towards the end of its first contract and where said employer has engaged in other unlawful conduct which is aimed at undermining and can only intend to undermine the union's status as collective bargaining representative.

The Employer, during the term of the agreement, on April 19, 1973, first refused and continues to refuse tomeet and bargain based on its assertion that the Union no longer

enjoys the majority support. The Employer has refused to and never has submitted any evidence, either in the RM petition or in the instant case, to support this position.

Further, on May 21, 1973, after receiving the instant charge, the Employer's attorneys systematically interrogated or attempted to interrogate each employee in the bargaining unit. Such questions were asked as, How long have you been employed at NRTA, Are you a member of the Guild, When did you become a member, Did you actively support the Guild, Who is your shop steward, et cetera. In effect, it is a poll of the employees, in clear violation of Section 8(a)(1) and, we contend, is part and parcel of the unlawful refusal to bargain in violation of 8(a)(5) of the Act as well.

Finally, on May 30, 1973, the employer unilaterally reduced the working hours of the employees to their benefit since they received no reduction in pay, again, without bargaining or notice to the Union in violation of section 8(a)(5) of the Act. That is all I have, Your Honor.

JUDGE BOTT: Mr. Lechner, do you have any statement?

MR. LECHNER: Very simply, Your Honor. This is a case in which the charging party, the Metropolitan Guild of Pharmacists, never could understand why the Employer has refused to bargain with it, despite my requests for bargaining, for evidence of why the Employer refused to bargain, and in our view the Employer's conduct at the conclusion of

the first year of the bargaining relationship between the parties and the conclusion of the first collective bargaining agreement between the parties was without any foundation in law or in fact and clearly violated the National Labor Relations Act.

We will seek the relief of the Act.

JUDGE BOTT: Mr. Darby, do you have anything?

MR. DARBY: I have no opening statement at this time, Your Honor.

JUDGE BOTT: The General Counsel?

MR. HOPSON: At this time, Your Honor, I would think it appropriate to introduce into the record stipulations of fact agreed to by the parties, if counsel for Respondent has no objection to this procedure, rather than reading them into the record.

JUDGE BOTT: I prefer that, if you can. This is General Counsel's Exhibit 2?

MR. HOPSON: That is correct, Your Honor.

(The above document was marked General Counsel's Exhibit No.2 for identification.)

MR. DARBY: Did you introduce the amendments to the Complaint?

MR. HOPSON: Yes, I can.

JUDGE BOTT: It is a good idea to have it a part of the record.

MR. HOPSON: I request that the amendments to the Complaint be marked as General Counsel's 3 and I offer them into evidence.

(The above document was marked General Counsel's Exhibit No.3 for identification.)

JUDGE BOTT: General Counsel's 3 is the amendments about which you had some discussion and on which rulings were made. It is admitted into evidence.

(The document, heretofore marked General Counsel's Exhibit No.3 for identification, was received in evidence.)

MR. HOPSON: I offer General Counsel's 2 into evidence. I might point out that there is a blank in the stipulation of fact in General Counsel's Exhibit 2 which will be filled in shortly when we get the document into evidence.

JUDGE BOTT: Are there any objections to this?

MR. DARBY: No, Your Honor. I have no objections to either General Counsel's Exhibit No. 2 or 3.

JUDGE BOTT: General Counsel's 2 is admitted into evidence.

(The document, heretofore marked General Counsel's Exhibit No.2 for identification, was received in evidence.)

Will you have any additional testimony with respect to paragraph 2 from the stipulation?

MR. HOPSON: Yes, we will have additional testimony.

I would like at this point of time, if Your Honor so desires, to call my first witness.

MR. DARBY: Your Honor, prior to Mr. Hopson's calling his first witness, I would like to just make note for the record that Mr. Robert Lewis of the firm did appear a short while ago and is now present in the courtroom.

JUDGE BOTT: You may call your witness.

MR. HOPSON: I call Mr. Lechner.

Whereupon,

IRA M. LECHNER

was called as a witness, by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Hopson) Would you state your name for the record, please?

A Ira M. Lechner.

Q Your address?

A 3244 Prospect Street, Northwest, Washington, D.C. 20007

Q Are you the same Ira Lechner who represents the Charging Party in the instant case?

A I am.

Q Did you in fact file the charge in this case?

A I did.

Q When did you first become involved with the Guild, the

Charging Party in this case?

A I believe it was about 1969, when I first began to represent the Metropolitan Guild of Pharmacists as an attorney.

Q As to this employer, the Retired Persons Pharmacy, when did you enter the picture on behalf of the Guild?

A To the best of my recollection, it was in the very early part of 1971 when the officers of the Guild informed me that an organizational drive was underway at the NRTA-AARP Pharmacy.

Q What happened as a result of your contact with the officers of the Guild?

A Thereafter, I was informed systematically that an organizational drive was underway and at a subsequent period, in early 1971, I filed a petition for an election after first requesting that the Employer recognize the Guild as the representative of its professional pharmacists. Having been denied by the Employer, I filed a petition with the National Labor Relations Board in the Fifth Region.

As a result of that petition, an election was conducted, I believe in November of 1971, and the Guild received 20 "Yes" votes to 10 "No" votes for the Employer and four votes were challenged. The challenges were never resolved because they would not affect the outcome of the election.

Q Did you get the results of the election?

A 20 to 10, with 4 challenges that weren't resolved.

Q What happened thereafter?

A Thereafter, the Regional Director certified the Metropolitan Guild of PHarmacists as the collective bargaining agent in the designated unit and the Employer, represented by counsel, Mr. Lewis, and myself began to negotiate for our first collective bargaining agreement.

MR. HOPSON: May I have this marked as General Counsel's Exhibit 4.

(The above document was marked General Counsel's Exhibit No. 4 for identification.)

Q (By Mr. Hopson) Mr. Lechner, I show you what has been marked as General Counsel's Exhibit 4 and ask you if you can identify that?

A Yes. This is the certification issued to the Metropolitan Guild of Pharmacists, designating it as the certified collective bargaining representative in the designated unit.

Q Just to firm up a couple offacts, if a tally of the ballots were put in, I think it would probably be the best evidence of the results of the election.

(The above document was marked General Counsel's Exhibit No. 5 for identification.)

I show you what has been marked as General Counsel's Exhibit 5 and ask you if you can identify that?

A Yes. This is the Tally of Ballots which we received and

which I witnessed the representative of the Fifth Regional Office fill out after the counting of the ballots for the election in this particular unit.

MR. HOPSON: I offer General Counsel's Exhibits 4 and 5 into the record.

JUDGE BOTT: Any objections?

MR. DARBY: Your Honor, Exhibit No. 4, it should be indicated for the record, is a two-page exhibit which is a Certification of Representative. The second page, dealing with copies which were sent out of the first page. I have not seen a copy of the second page, but I will have no objection to the introduction of either exhibit. I do have the second page, but I had not seen the second page before this morning.

JUDGE BOTT: It is just the indication of service on various people.

MR. DARBY: I have no objection.

JUDGE BOTT: General Counsel's 4 and 5 are admitted.

(The above documents, heretofore marked General Counsel's Exhibits Nos. 4 and 5 for identification, were received in evidence.)

This might be a good time to ask you, Mr. Darby: in the answer, you didn't deny that you questioned paragraphs 5 and 6 of the Complaint. As I see it now, the point you were making was with respect to the improper description of the unit.

MR. DARBY: That is correct, Your Honor.

JUDGE BOTT: Since he has amended it, will you admit paragraphs 5 and 6 of the Complaint now?

MR. DARBY: I believe, with regard to the amendment, that the General Counsel has as General Counsel's No. 2, it was a total substitute for the old paragraph No. 5. I have already stipulated to that amendment. Therefore, we have admitted,by that stipulation.

JUDGE BOTT: I understand. No. 6 is the allegation that the Guild and the Respondent executed a contract. I think you had some question about that and I assume that was again with respect to the unit.

MR. DARBY: That is correct also, sir.

JUDGE BOTT: You now admit the fact that you entered into the contract?

MR. DARBY: We did enter into a contract on the dates as stated in paragraph 6 of the Complaint.

JUDGE BOTT: Thank you.

Q (By Mr. Hopson) After the certification, were there negotiations, Mr. Lechner?

A Yes, there were very protracted negotiations and there was a committee of the Guild who were presentat each of the negotiations. There were a number of representatives of the Employer along with their counsel who were present at the negotiations and we conducted a long series of meetings,

stretching out over a significant number of months, through the winter and into the spring. My recollection is that we reached agreement after the aid of a Federal Mediator in June of 1972, with the contract to be retroactive to May 30th or May 29th of that year.

Thereafter, the respective counsel attempted to reduce the agreement to writing and we ran into some additional disputes as to the particular language to be used in several of the sections of the contract. That was not formally resolved now until the end of the summer. As I remember, the contract was finally executed by the parties in September of 1972, being retroactive to May.

MR. HOPSON: May I have this marked as General Counsel's Exhibit 6.

(The above document was marked General Counsel's Exhibit No. 6 for identification.)

Q (By Mr. Hopson) Mr. Lechner, I show you what has been marked as General Counsel's Exhibit 6 and ask you if you can identify this document?

A Yes. This is the first collective bargaining agreement entered into between the parties in 1972.

MR. HOPSON: I offer General Counsel's Exhibit 6 into evidence.

MR. DARBY: We have no objection.

JUDGE BOTT: General Counsel's Exhibit 6 is admitted.

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(The document, heretofore marked General Counsel's Exhibit No. 6 for identification, was received in evidence.)

Q (By Mr. Hopson) Mr. Lechner, during the term of the agreement, did you have occasion to be involved with the Guild and this employer?

A Yes, I represented the Guild throughout, with respect to other units the Guild was involved in and with this particular unit. I would not normally be called by the Guild officers, unless a dispute with a particular employer involved a serious legal matter which I would later be involved in as an attorney. In this particular unit, I was called in by the Guild officers on a number of occasions to pass judgment on the different issues that had arisen between the Guild officers and the NRTA-AARP Pharmacy, the Employer.

MR. DARBY: Mr. Bott, we would like to object to the part of the witness' response which is not relative to the question that was posed concerning his involvement with the Guild, his normal involvement, in relation to the pharmacy and ask that this aspect of the response be stricken.

JUDGE BOTT: It is going to be difficult for me to unravel it. Much of what he said was not in response to the question and I am not sure that much of what he said has any relationship to the issues in this case. As of this point, no one has raised this point except myself. Let's leave the

record that he represented the Union, the Charging Party, during the period of the term of the contract and on occasion he was called upon for legal advice.

MR. HOPSON: Yes, Your Honor. I was going to try and pin this down to specifics as part of our proof that the Guild is a viable union and not in any sense of the word walking away from this unit.

JUDGE BOTT: You are anticipating something.

MR. HOPSON: If Your Honor please, I am anticipating something that I am going to put in the record that is a part of my case. Maybe I can put it in now. It might be premature, but it relates to the interrogation in the matters dealt with which will be on my side of the ledger. I would like to get in this as background.

JUDGE BOTT: All right. I won't try to stop it. It might prejudice your presentation.

MR. HOPSON: I dont believe it will take long.

JUDGE BOTT: Go ahead.

Q (By Mr Hopson) Approximately how many of these occasions are you speaking of?

A As I recollect, four or five or six different legal issues with respect to the administration of the contract and the grievances that arose between the Employer and the Union which were brought to my attention. I had to make some judgments and give legal advice to my clients as to how to

handle those issues. I am rather uncertain in my mind as to whether I even called Mr. Lewis on several of them, but I think I did.

MR. DARBY: Mr. Bott, I would like to know how far counsel for the General Counsel is going to pursue this line of questioning since this is not part of his case. The response of the witness is conclusionary as far as his testimony is concerned, rather than the facts being introduced. We would have to examine him concerning all of these issues that are being raised.

JUDGE BOTT: Let me try then what I was going to do before, Mr. Darby.

Mr. Lewis, is it a part of you r defense that the Charging Party is a defunct labor organization?

MR. LEWIS: No, sir.

JUDGE BOTT: Will you concede that, as labor organizations go, up until the expiration of the contract it was there representing the employees? I don't indicate the majority representative.

MR. LEWIS: Your Honor, the word "defunct", as you know, is a word of art in labor law and in the NLRB procedures. We concede that the organization was not defunct. Whether it was something else is something that the testimony will have to show. We are suggesting that this aspect of what may develop later on, brought in by General Counsel now, is

brought in at the wrong stage. After we raise such a defense, if we do, then he should present evidence. This will unduly delay General Counsel's presentation of the case. We have to examine at great length, by his raising this at this point. That is all I am suggesting.

JUDGE BOTT: You can get it out of the case by agreeing or not agreeing as to what the facts are. Did the Union present grievances during the life of the contract?

MR. LEWIS: Your Honor, that is part of our case. We are not ready to present that.

JUDGE BOTT: I didn't ask you whether it was part of your case or not. I asked you, are you willing to make a stipulation of fact.

MR. LEWIS: No, sir. It is a disjointed method of proceeding. That is all I am suggesting.

JUDGE BOTT: I don't think so. If part of your case is going to attack the viability of the Union, if, and you have not indicated whether that is true or not, then it is proper for the General Counsel to try to show the contrary. It would also seem to me proper to show something in that field or in that area to throw color or light on the interrogation which took place and part of the interrogation was, have you ever paid your dues, have you ever had any assessments, do you get any literature from the union and so on.

If this were a very live labor organization, or at least

alive, those questions on the right to interrogate in order to prepare you case, those questions would have seemed to have gone too far. That would be something that is not really in issue.

MR. LEWIS: How could you make that comment, Your Honor, before having heard our case.

JUDGE BOTT: I said "if". I don't know.

MR. LEWIS: We withdraw our objection, just so that we can proceed, to this line of interrogation of the witness. We would request, if we may, that you not anticipate what we may present concerning the interrogation.

JUDGE BOTT: I am not anticipating. I am asking questions in order to perhaps see if we can get a stipulation or shorten this hearing.

MR. LEWIS: There was some suggestion on your part that perhaps some of the questions which you have perhaps seen already might be outside the issues.

JUDGE BOTT: They conceivably might. It is possible. The only way I can try to explore the narrowing of the issues in this case is to make comments and to ask questions. I am going to continue to ask them.

MR. LEWIS: Thank you.

JUDGE BOTT: You may proceed.

MR. HOPSON: Thank you, Your Honor.

Q (By Mr. Hopson) I believe you mentioned grievances that

you had some involvement with as representative of the Guild. At what stage were these grievances? Do you recall? If you could, pin down the approximate date when these things came to your attention?

A We are talking about a period of time from September of 1972 until the first part of April 1973. Early on in that period of time, an employee-- I am trying to recollect his name-- was discharged. George Davis was his name. The Guild officers protested the discharge, raised the matter with me as their attorney. I interviewed the grievant, conducted some questioning of a number of other Guild members in the unit, did some research and ultimately advised the officers and the grievant that there wasn't a sufficiently strong case to actually carry it to arbitration pursuant to the provisions of the collective bargaining agreement.

Q Did you have any discussions with anyone in Management on that particular grievance?

A I seem to recollect that I talked to Ms. Braden, who is an attorney representing the Employer, in an effort to get the Employer to voluntarily reinstate the grievant without having to go to arbitration. Then, as I recollect it, they refused to change their decision in the case and we did not proceed to arbitration in it. Thereafter, another employees, whose name escapes me, was discharged and was in the hospital. Again the Guild protested the grievance discharge. I interviewed

some witnesses and we did not carry the case to arbitration. I believe, even in that case, the grievant himself did not wish to return to work or some such reason as to why we didn't go to arbitration.

There were a number of other instances where there was another employee whom we suspected was about to be discharged because of some references to her work having been made by her supervisor. I counseled with that employee through the Guild officers as to how to conduct herself in the course of work so that she might avoid discharge or so that we would have a stronger case in the event she was discharged and we went to arbitration. I seem to recollect as well that there was some dispute involving scheduling, but I really couldn't pin it down any better than that. I am afraid, Mr. Hopson, that in the course of my work I handle grievances from a number of different clients. Consequently, I really can't sort it out that clearly in my mind with respect to these other grievances. But there were a number of others. I recollect very specifically talking to the Guild officers about different issues that would be raised with them by employees and they would seek my advice and I would talk to them about it and counsel them.

It was clear, as we went along, that the relationship between the parties was excellent and we had little occasion to have serious disagreements between the two parties. The

relationships got better and better as the contract progressed.

Q Did you, at some point in 1973, request the contract be terminated and negotiations begin?

A Yes. As I recollect, on March 7th of 1973 I wrote a letter to Mr. Lewis with whom I had had professional dealings as the Employer's representative in the course of our dealings with the Employer. I requested that we enter into new negotiations for a new contract because the first agreement was going to expire at the end of May of 1973.

MR. HOPSON: May I have this marked as the next exhibit?

(The above document was marked General Counsel's Exhibit No. 7 for identification.)

Q (By Mr. Hopson) I show you what has been marked as General Counsel's Exhibit 7 and I ask you if you will identify that, please.

A Yes. This is the letter I wrote to Bob Lewis. This is a carbon copy of the letter I wrote to Bob Lewis, asking him to get in touch with me to set up times and places for negotiations.

MR. HOPSON: I offer General Counsel's Exhibit 7 into the record.

MR. DARBY: No objections.

JUDGE BOTT: General Counsel's Exhibit 7 is admitted.

(The document, heretofore marked General Counsel's Exhibit No.7 for identification, was received in evidence.)

Q (By Mr. Hopson) Mr. Lechner, what response, if any, did you receive to your March 7th letter?

A I think there were both written and phone conversations between myself and Mr. Lewis and Ms. Braden, attempting to set up a time and place when we could discuss the ways in which we would then proceed. Mr. Lewis advised me that he had an extraordinarily busy schedule around the nation and we had great difficulty in setting up a mutual time and place. We finally agreed on April 19th, here in Washington, for lunch.

Q What happened on April 19th?

A On April 19th, Mr. Lewis and Ms. Braden came to my office. We went to lunch at a restaurant nearby. We chatted about everything else before and during the lunch. At the conclusion of the lunch we got down to business and I asked when we would schedule our first negotiations. I told them that I felt the relationship between the parties was excellent and that I felt we would have a rather expeditious negotiation this time as compared to the rather protracted one we had previously, without any great difficulty.

Q What was their response?

A At that point Mr. Lewis said, now that lunch was over, in his words, he would have to tell me that the Employer refused to meet and confer and bargain with the Guild.

Q Did he state a reason?

A No. Yes, in a sense he said, the Employer doubted that

the Guild represented a majority of the employees. I was stunned by what he said because I had absolutely no hint that this was going to be his response until that moment.

Q How did you respond?

A I think I got angry or at least I was questioning him. I said that I was very upset by that decision on their part and what conceivable evidence did they have that the Guild didn't represent a majority; that the relationship between the parties was superb; and that I was just mystified by his answer. I really was. I don't believe I have ever been so shocked in dealing with an employer. I just had no expectation that this is what would happen.

I asked him to reconsider. I told him I felt that this was a good collective bargaining relationship and it should continue. I told him, if the Employer was not going to reconsider, we were going to have a war; that it would be a bitter confrontation, a bitter war between us; that there were other non-represented employees at this employer's plant called "pickers and packers", rather euphemistically, employees who take the goods as they come from the drug houses and unpack them and sort them and prepare the drugs for later shipment to the pharmacy and to the business where the pharmacists then do their work. Those pickers and packers were not represented at that point by any labor organization and I told Mr. Lewis that in the event the Employer refused to

recognize any longer the Guild, I would have no hesitation at all in recommending to other labor organizations that they go out and seek to represent the pickers and packers; that the Guild would fight them every which way that it possibly could; and that it would be a very unfortunate circumstance.

I asked him, could he please go back to the Employer and see if they could reconsider. Mr. Lewis told me, they were going to file a petition or had filed--I don't know which-- a petition with the National Labor Relations Board seeking an election. I said, I hope he would go back to see the Employer and call me before the day was out. We left on that note from lunch.

About an hour later, maybe an hour and a half, as I remember, Ms. Braden called me and said that they had met with the Employer and the Employer refused to reconsider his decision and that the Employer again refused to meet and bargain with me.

Q During this conversation, did you ask for evidence to support the claims?

A Yes. I asked them on what basis did they believe that the Guild didn't represent a majority.

Q What was the response?

A They did not give me any answer at all. They said that they reasonably believed. I believe Bob stated it in a legal and rather technical way, the way one would write it in a

pleading, that they had reason to believe that the Guild did not represent a majority of the employees in the unit and did not offer me any evidence of that in the sense that they would file a petition.

Q After this meeting and after your conversation with Ms. Braden in her call later that day-, did you receive anything else in the way of a position from the Employer as to what they were going to do?

A Yes. Two days later, on April 21st, I received a letter dated April 19th from Bob, Bob Lewis, restating what he had told me at lunch. It is in a very much shortened form, obviously. It is the legal essence of what he had told me at lunch, stated in his April 19th letter.

MR. HOPSON: May I have this marked as the next exhibit.

(The above document was marked General Counsel's Exhibit No. 8 for identification.)

Q (By Mr. Hopson) I show you what has been marked as General Counsel's Exhibit No. 8 for identification. Can you identify that, please?

A Yes. This is the letter that Mr. Lewis sent me which I received on April 21st.

MR. HOPSON: I offer General Counsel's Exhibit 8 into evidence.

JUDGE BOTT: Any objections?

MR. DARBY: No objection.

JUDGE BOTT: General Counsel's 8 is admitted.

(The document, heretofore marked General Counsel's Exhibit No.8 for identification, was received in evidence.)

Q (By Mr. Hopson) Did you in any way respond to this letter?

A Yes. On that day, April 21st, I sat down and wrote a long letter to Mr. Lewis, restating my position in the matter. I remembered that I had bought a copy of a book that Mr. Lewis had co-authored and I thought it would be interesting for me to take a look at what he had to say about this very situation in his own book. I very specifically remembered, before I wrote the letter, looking at his book which I think is called "Winning an NLRB Election", about an employer's refusal to bargain with an incumbent, certified union.

MR. HOPSON: May I have this marked as the next exhibit.

(The above document was marked General Counsel's Exhibit No.9 for identification.)

Q (By MR. Hopson) Mr. Lechner, I show you what has been marked as General Counsel's Exhibit 9 and ask you to identify it, please.

A Yes. This is a carbon of the letter that I wrote to Mr. Lewis on the 21st.

MR. HOPSON: I offer General Counsel's 9 into evidence.

JUDGE BOTT: Any objections?

MR. DARBY: No, sir.

JUDGE BOTT: General Counsel's 9 is admitted.

(The document, heretofore marked General Counsel's Exhibit No.9 for identification, was received in evidence.)

Q (By Mr. Hopson) I believe you earlier referred to an intention to file a petition. Was such a petition filed?

A Yes, the petition was filed and I seem to think that I had received it as of the 21st, but I am not certain whether I was referring to "your petition" as I had in my April 21st letter, I was referring to what Bob had told me they were going to do, or whether at that time I had already received the petition. I maintained as well that the petition should be dismissed and that it was untimely as well, in terms of its filing.

Either on the 21st or shortly thereafter, I received a copy of the petition that Mr. Lewis had filed on behalf of the Employer and I responded to it. Thereafter, the Regional Director dismissed it.

MR. HOPSON: May I have this marked as the next exhibit.

(The above document was marked General Counsel's Exhibit No.10 for identification.)

Q (By Mr. Hopson) Mr. Lechner, I show you what has been marked as G.C.10 and ask you to identify it.

A Yes. This is a copy of the dismissal letter of the

petition.

MR. HOPSON: I offer General Counsel's Exhibit 10 into evidence.

JUDGE BOTT: Any objections?

MR. DARBY: No, sir.

JUDGE BOTT: It is admitted.

(The document, heretofore marked General Counsel's Exhibit No.10 for identification, was received in evidence.)

Q (By Mr. Hopson) After you received the dismissal letter from the Regional Director of the Fifth Region, what happened?

A I received it on the 7th or the 8th of May. I immediately called Mr. Lewis to renew my request to bargain now that the petition was out of the way. I believe Ms. Braden called me back and I specifically asked what date would we then sit down and bargain. She laughed and said, they are renewing their refusal to bargain with us on the ground s that they doubted we had a majority, that we represented a majority of the employees.

Q Was anything discussed, one way or the other, about a refiling of the petition or you filing a petition?

A No. I believe I told her that I would be forced to file an unfair labor practice charge. I felt the Employer was being obstinate and there was no ground for what they were doing and I was rather angry. I told her that I would file an unfair

labor practice charge. She just said, "Go ahead" or words to that effect.

Q After you filed the instant unfair labor practice charge, what happened next?

A I filed the unfair labor practice charge and thereafter I was informed by my client one morning that three attorneys had appeared at the company's offices that same morning; that the three attorneys were there at the moment that I received the phone call; and that they were asking different employees to go with them and were questioning them; and what should they do.

I told them they should tell the employees to refuse to answer the questions and to just refuse to cooperate whatsoever; that it was in my view highly improper. They told me that there were some employees who were scared.

Q Did your client inform you as to what the questions were and the nature of them?

A Yes. They said that--

MR. DARBY: Your Honor, before we go on, I move to strike the last response of the witness on the fact that they told another party that they were scared, when there is no indication as to who the party was, the name of the person he is supposedly relating the conversation about and it is truly hearsay and inadmissible.

JUDGE BOTT: Your motion is granted.

Q (By Mr. Hopson) Did you client tell you the nature of the questions?

A Yes.

MR. DARBY: Judge Bott, could he possibly tell us who the person is that is supposedly speaking to Mr. Lechner at this time, during this conversation?

JUDGE BOTT: That seems like a very reasonable request to me.

Q (By Mr. Hopson) Who was it?

A I believe it was David Leise. He is the former president of the Guild and a member of the Board of Directors. He was the Guild officer who was most directly responsible for the administration of this contract in this unit. David called me that morning and said that the employees in the unit had immediately been in touch with him. They were asking questions about the Guild and whether they were members of the Guild. They were the only questions, as I remember, that David said he knew about.

I told him to tell the employees to refuse to answer the questions and then I told him that if an employee was concerned about his refusal, was afraid to take that position, the employee should lie to the questioner and to disclaim any membership in the Guild, even though the employee was a member of the Guild. I told him that I felt how there might be some trouble for us in the future, but I didn't want to jeopardize

the employment of any of the employees in question because the contract was about to expire and I was in a situation where I didn't have an arbitration clause to hang on to.

MR. DARBY: Your Honor, I move to strike that last part of the witness' testimony as unresponsive to anything that was asked and is based upon no testimony being in the record to warrant it.

JUDGE BOTT: Let me ask counsel: what is the purpose of this line of questioning?

MR. HOPSON: This is there for the purpose of laying a foundation for a later witness who will testify that in effect these instructions were carried out.

JUDGE BOTT: Basically, you are not putting in some of this evidence to prove the truth of the witness' statement, for example, that a person was scared, but his advice to his client to explain the next witness' testimony, acting on the advice of counsel.

MR. HOPSON: The prior testimony about being scared only goes to show the basis for his advice to his client. That is all. Standing alone, it would look rather curious that an attorney would tell somebody to lie and that's the only reason. It would look, on its face, rather curious that an attorney would tell somebody to lie. That is the reason for this other testimony.

JUDGE BOTT: You and I are living in different worlds.

MR. HOPSON: Having watched a lot of television.

JUDGE BOTT: With respect to this case, with the understanding you have just given us and in the light of my statement, the objection is overruled.

MR. LEWIS: Your Honor, I just want to call counsel's attention to that reference to the prior testimony concerning somebody being scared. It was stricken from the record.

JUDGE BOTT: That is correct. I just used that as an example.

MR. LEWIS: He did. He mistakenly made mention of that.

MR. HOPSON: I heard it somewhere.

JUDGE BOTT: Proceed.

MR. HOPSON: May I have this marked as the next exhibit.

(The above document was marked General Counsel's Exhibit No.11 for identification.)

JUDGE BOTT: Just so that the record will not mislead anyone, when counsel Lechner said that he had advised his client to tell the employees, if they were concerned, not to tell the truth, certainly I understand the reason he gave. But it also struck my ear as being in the area of, when persons are asked by an employer about their union affiliations or sentiments, one of the elements that one court takes into consideration in evaluating whether or not the interrogation was coercive was whether or not the employee told the truth or not. So that is why I thought this was all within the legal

ballpark. I wanted to explain my remark about the lying business.

It wasn't about an attorney advocating lying. He was permitting an employee to give an answer which may not have been factual because of a certain line of cases.

MR. HOPSON: That is our feeling as well, Your Honor.

I would like to move the admission of General Counsel's Exhibit 11, which I have just had marked, along with the following stipulation that I would propose.

JUDGE BOTT: Let me hear you.

MR. HOPSON: The stipulation I would propose is that on May 21st of 1973, at the Employer's premises, three attorneys representing the Retired Persons Pharmacy, the respondent herein, utilized the document contained in General Counsel's Exhibit 11 which, by the way, consists of three pages, in questioning and interrogating employees represented by the Guild. These attorneys were acting as agents of and on behalf of the respondent herein, on May 21st, in said questioning and interrogation of the employees.

JUDGE BOTT: Do you accept the stipulation?

MR. DARBY: No, I do not accept that stipulation, Your Honor.

JUDGE BOTT: What is wrong with it.

MR. DARBY: May we go off the record to see if we can work it out?

JUDGE BOTT: Off the record.

(A discussion was held off the record.)

JUDGE BOTT: On the record.

MR. HOPSON: Your Honor, prior to posing another stipulation, one I think we can agree on, I will again offer General Counsel's Exhibit 11 into evidence.

JUDGE BOTT: I assume there is no objection.

MR. DARBY: I would like to note, Your Honor, that since this is a three-page exhibit and probably will be referred to periodically during the course of this trial, it might facilitate things if we number it as General Counsel's Exhibit 11(a),(b) and (c).

MR. HOPSON: That is fine with me, Your Honor.

JUDGE BOTT: 11(a),(b) and (c) are admitted.

(The documents, heretofore marked General Counsel's Exhibit No.11 for identification, were received in evidence.)

MR. DARBY: In the off-the-record discussion concerning the stipulation proposed by counsel for the General Counsel, we did discuss it and I am willing to propose an alternative stipulation that possibly we could agree to. It would be, "On May 21, 1973, three attorneys questioned a number of respondent's employees in the certified bargaining unit, utilizing the statement and list of questions listed on General Counsel's Exhibit 11(a),(b) and (c)."

MR. HOPSON: Without precluding ourselves from putting on additional testimony as to this aspect of this case, we are willing to accept this stipulation.

JUDGE BOTT: All right. We will meet that when it comes up. The stipulation is noted and approved.

Is it your problem, whether or not they were acting on behalf of respondent?

MR. LEWIS: Yes.

MR. DARBY: And also--

JUDGE BOTT: I am going to assume you were. I am going to find, on the basis of this record so far, that you were unless you put in evidence that you were not. Your names are all over these pleadings. You represent this company. You have agreed that 11(a),(b) and (c) can go on in. Who were you representing? The Union?

MR. LEWIS: Your Honor, the proposed stipulation is that we were acting as agents for the respondent. That is a legal conclusion.

JUDGE BOTT: I understand that. I heard you. I said you are acting on behalf of the respondent. Weren't you?

MR. LEWIS: Your Honor, the proposed stipulation was that we were acting as agents.

JUDGE BOTT: We have passed that. I asked you, would you agree that you were acting on behalf of respondent. Weren't you?

MR. LEWIS: Of course. We are counsel for respondent.

JUDGE BOTT: Now we have gotten over that, let's go on with the case.

MR. LEWIS: But not in interrogating those employees. We were not acting as agents or on behalf of respondent in interrogating those employees. We were acting as counsel for respondent.

MR. DARBY: The supposition that it was interrogation or the allegation of interrogation is also incorrect.

MR. LEWIS: We were questioning the employees in preparation for the trial in this hearing and in preparation for the defense of the charge.

JUDGE BOTT: At that time you were retained by respondent; correct?

MR. LEWIS: That is right.

MR. HOPSON: I will be willing to stipulate, they were retained by respondent at that time, Your Honor. That would preclude any further argument.

Q (By Mr. Hopson) Mr. Lechner, after May 21st, did anything else happen with regard to this case that came to your attention?

A Shortly before the contract was to expire, I think on the last day or the day before, I was called by myclient and informed that the members of the unit had been told by one of the Employer's supervisors that on a day after the expiration of the contract their work week would be reduced from 43 and a

half hours to 40 hours a week.

MR. DARBY: I object to that.

JUDGE BOTT: On what grounds?

MR. DARBY: As being hearsay.

JUDGE BOTT: Objection sustained.

MR. DARBY: I also move to strike it.

JUDGE BOTT: It is out.

Q (By Mr. Hopson) Mr. Lechner, did you give any advice at that point when you were advised-- Were you advised that a change had been made and did you give any advice?

JUDGE BOTT: Mr. Hopson, I am not sure where you are going. You have a stipulation, I think you have, I am sure you have, that the respondent without notice unilaterally reduced the work week of said unit employees from 42 and a half hours to 40 hours. What difference does it make whether he gave them any advice or not?

MR. HOPSON: I withdraw the question.

Q (By Mr. Hopson) Mr.Lechner, since your involvement with this labor organization and this employer, which I think you said began some time back in early 1972, have you dealt with attorneys from the firm of Jackson, Lewis, Schnitzler & Krupman as representatives of this respondent?

A Yes, Mr. Hopson. I believe my first contact was in early 1971.

Q And your contacts with them as representatives of the

respondent have continued up until almost today?

A Yes; until after the charges were filed in this case.

MR. HOPSON: That is all I have, Your Honor.

JUDGE BOTT: We will take a ten minutes recess.

(A short recess was taken.)

JUDGE BOTT: The hearing will be in order.

CROSS-EXAMINATION

Q (By Mr. Darby) Mr. Lechner, you indicated that the Guild contacted you at some point in time concerning an employee that was discharged. Who was the person who contacted you from the Guild?

A I would have routine contact with either Vic Meszaros who worked within the unit or David Leise who is the former president of the Guild and an officer or Ben Friedman who was the head of the grievance committee of the Guild.

Q Do you recall who you had the conversations with concerning the employee that was discharged?

A There were two employees that were discharged.

Q What were their names?

A I had a whole host of conversations. It wasn't just one conversation. There were many conversations over a course of weeks.

Q What were the names of the two employees that were discharged?

A George Davis was one and, as I testified, I cannot

recollect the name of the other individual who was in the hospital at the time he was discharged.

Q Do you recall when you had the initial conversations concerning the discharge in regard to George Davis?

A No, I can't pin the date down.

Q Doyou recall who you were speaking with in regards to that discharge? Who advised you of it?

A The first conversation?

Q That's right.

A I cannot tell you.

Q Do you recall why the employee was discharged?

A I recall that the employee had written some letters to a life insurance company that he thought was connected with the company in which he accused the company of all sorts of dastardly acts. I don't remember if that was the cause of the discharge or whether it was just general work performance that was the cause of the discharge, but the employee was a very easily excitable and very upset individual and there were a number of different reasons, as I remember, involved in the case.

Q When did he advise you of the fact that he was discharged or when didyou learn that he was discharged?

A As I recollect, it was shortly after he had been discharged.

Q When was that?

A As I told you, I cannot recollect the precise day. It may

have been while we were at the end of negotiations or it may have been after formally executing the document. I really am not able to recollect. I am quite sure it was in 1972. I would feel reasonably certain that it was 1972.

Q But it could have been even before the contract was executed? Is that right?

A Oh, it's possible because there was a long span of time between the time that negotiations ended and the contract was formally executed because of some disagreements in the drafts that were exchanged between counsel.

Q When was the contract executed?

A It was formally executed, I believe, September 1st.

Q So this would have been even during the summer of 1972; isn't that correct?

A Oh, yes, it's quite possible. We handled this contract as an operative contract fromJune when the formal negotiations ended. We had agreement. All we were stuck on between the end of June and the first part of September was a phrase and one or two clauses and we handled it as an operative contract. As I remember, we talked about it back and forth and we just awaited the formal execution of the agreement until later.

Q But as to pinpointing the exact date of his termination, it could have been at any time--

A It could have been at any time in '72.

Q Did you ever speak to him?

A Yes, I interviewed Mr. Davis.
Q What was the problem you did the research on?
A As I recollect, I looked at a number of arbitration cases dealing with an employee's contact of persons outside the company and as to whether potentially libellous statements to those persons would constitute a very sound defense on the part of the Employer for discharge.
Q Did any representative of the Guild ever speak to the Employer, the company, any supervisory person in the company concerning the discharge of Mr. Davis?
A My believe is that it happened, yes.
Q Who?
A I would think it would probably have been Mr. Meszaros, but it might have been Mr. Leise or Mr. Friedman.
Q But you are not certain?
A No. I honestly cannot tell you which one of those three individuals because they were interchangeable in dealings with the Guild.
Q But you are certain that any one could have spoken to any supervisory person in the pharmacy concerning the discharge of Mr. Davis?
A Since I wasn't in the pharmacy, I couldn't tell you that I am certain that it actually happened. It is my impression.
Q But your impression could also be the fact that nobody really did speak to anybody in the pharmacy concerning the

discharge of Mr. Davis?

A No. My impression is that someone did. Whether someone did or not, Mr. Darby, I cannot tell you.

Q Do you know anything concerning the second employee who was discharged? Do you know the name of the employee?

A I cannot recollect the name of the employee.

Q Do you know the reason why he was discharged?

A Yes. I remember he was either discharged for alcoholism or extreme absences or a combination thereof. I recollect that the employee was in the hospital and I seemed to recollect there was an alcoholism problem. You have to bear in mind that I handle anywhere from 50 to 150 discharge cases a year and I really cannot tell you the precise reason in that particular case.

Q Do you recall when the employee was discharged?

A My impression was that it was somewhere in the latter part of '72. That is the best I can tell you. For some reason, in the back of my mind, there sticks either Christmas or Thanksgiving or something like that. It was towards the end of '72, as Irecollect it. I could be wrong.

Q Did you ever contact anyone at the pharmacy concerning whoever this employee was that was discharged at some time?

A No, I did not in that particular case. In that particular case I talked to my client and considered the case and got all the evidence together and advised that we did not have a good

case to go to arbitration in my view.

Q You indicated there was an employee who, it was suspected, was going to be discharged. Who was that employee?

A I honestly cannot recollect the name of the employee.

Q Do you recall when that occurred?

A The fall of '72, as I remember. It was after we had reached agreement on the contract. I can't recollect whether it was after. It must have been because I was on vacation for a good deal of that summer. It wasn't when I was on vacation. I would say that it was in the fall or early winter of '72.

Q Why was the employee thinking that there was going to be a discharge?

A The employee, as I remember, was cautioned by supervisory personnel as to her work habits. Maybe she was extremely nervous and excitable young lady and she had some personal problems and her work was erratic. I don't know whether she met her daily quota of filling prescriptions. There was a daily prescription quote of 175 prescriptions that had to be filled, if I remember. That meant a very intensive work performance. She had some difficulty in filling it. We were concerned that she was being-- that the foundation was being laid for discharge.

Q Did she speak to you about it?

A No. I believe I did conduct all of my investigations through Mr. Meszaros or through Mr. Friedman.

Q Didn't you indicate that you counseled the employee?
A No. I think I indicated I counseled her through the Guild officers.
Q Didn't you tell her how she should conduct her self?
A Yes, through the guild officers. I told them to tell her how to conduct herself and to keep a log of any comments made to her by supervisory employees, to try to keep a log of her absences and the reasons for her absences. She had some difficulty with a child, in taking that child to school and she was periodically late, as I remember.
Q But you never spoke directly with her?
A With that employee?
Q Yes.
A No
Q So you don't know who she is?
A I don't know her name; I know who she is. I know that I met her during the time when I met the unit on a number of occasions during negotiations. I met with the unit on a number of occasions and I knew who she was. I don't remember her name now.
Q What was the problem that arose concerning scheduling?
A I am sorry, Mr. Darby, I am unable to recollect the details of that problem.
Q Do you know when it occurred?
A No.

Q Do you know how it was raised?

A It was raised to me by Guild officers.

Q In regard to the problem of the last employee who thought she was going to be discharged, did you ever speak to anyone at the pharmacy concerning this?

A No, of course not. We were at the stage where I was counselling her through the Guild officers how to avoid discharge. I wasn't about to bring the problem up to the Employer.

Q Did you ever speak to the Employer about the scheduling problem?

A I am trying to recollect whether I talked to Ms. Braden or not.

Q Ms. Braden is not a supervisory or administrative person of the pharmacy; isn't that correct?

A Mr. Darby, I never conducted any dealings with this Employer except through your firm. I would never feel it was proper or ethical for me, as an attorney, to talk to your client without talking to you first. I talked to your firm exclusively.

Q Did you speak to Ms. Braden in regards to the scheduling problem?

A I can't honestly recollect. There was a --

Q I believe you answered the question. Mr. Lechner, in regard to setting up the meeting with Mr. Lewis and Ms. Braden

on the 19th, you indicated that you had phone conversations with whom?

A I thought it was with Bob or with Ms. Braden and I think, as I said in my direct examination, that it might have been a letter or two back and forth between us. I know we had some difficulty with the Passover holidays and in trying to arrange a time that we could meet that didn't conflict with Passover and with Bob's trips to other parts of the country.

Q Wasn't there also a Good Friday somewhere around there?

A I normally don't observe Good Friday, so I don't recollect it.

Q Isn't it true that in setting up the meeting with Mr. Lewis you never actually had any direct phone conversations with him; that it was all done by mail?

A If you say so, Mr. Darby. It's possible. I seem to recollect there was a phone call in there somewhere.

MR. DARBY: I would like to mark these two documents as Respondent's Exhibits No. 1, and No. 2.

(The above documents were marked Respondent's Exhibits Nos. 1 and 2 for identification.)

Q (By Mr. Darby) Would you look at these?

A Mr. Darby, this correspondence you have given me, I think, refreshes my recollection. Now I am pretty convinced that there was a phone conversation preceding my March 24th letter.

Q Did you ever have the phone conversation with Mr. Lewis?

A I would think so because "I am free all the week of the 16th of April" and I recollect that both of us took out our calendars and talked about it or I talked about it through Ms. Braden. I very often communicated with Mr. Lewis through Ms. Braden. Mr. Lewis was mostly not available for direct conversation. I would call her and she would return the call to me and I would call him back and she would again return the call to me.

Q Do you recall why the meeting was scheduled for the 20th of April, as originally indicated in Respondent's Exhibit No. 2, which is a letter dated March 28th from Mr. Lewis to you?

A No, I don't, if that's Good Friday. Maybe it is. I don't recollect.

MR. DARBY: I would like to offer these two exhibits into evidence at this time.

JUDGE BOTT: Are there any objections?

MR. HOPSON: No objection.

JUDGE BOTT: Respondent's 1 and 2 are admitted.

(The documents, heretofore marked Respondent's Exhibits 1 and 2 are admitted.)

MR. DARBY: Respondent's 1 would be the letter of March 24th from Mr. Lechner to Mr. Lewis and the other would be marked Respondent's 2.

JUDGE BOTT: They are so marked.

Q (By Mr. Darby) Mr. Lechner, with regards to the meeting between Mr. Lewis and Ms. Braden on the 19th of April, the luncheon meeting, isn't it true that Mr. Lewis advised you of the fact that the petition was going to be filed by the company because the company did not believe that the Guild continued to have the support of the majority of the employees?

A I don't recollect whether he said it was going to be or whether it had been, but he did say that they did not believe that the Guild continued to represent a majority of the employees.

Q Isn't it true that in that luncheon conversation, after Mr. Lewis indicated a petition was going to be filed, that you responded that there should be probably no problems with the processing of the petition; that all the unit questions had been resolved; we know who would probably be eligible to vote in the election; and we can have the election soon?

A I said that if the petition proceeded to fruition, that would be true; yes. I objected and said that I didn't want an election under any circumstances and that there was no cause for an election.

Q Isn't it true that you also mentioned to Mr. Lewis, how could you question that the Guild did not represent a majority without truly asking for a response to the question, but making a rhetorical question as a statement of fact: "How could you say that the Guild doesn't represent a majority?"

A Yes. I asked,how could you say that the Guild doesn't represent a majority and what evidence do you have.

Q Did you add "what evidence do you have" at that point of time?

A Yes, because I remember specifically talking to Bob about the fact that there was no reason for him to doubt it in my mind and I couldn't believe what evidence they had that we don't represent a majority.

Q Isn't it true that you probably just said, "Why do you doubt it", without asking"what evidence you have" and merely saying that they do represent a majority?

A Mr. Darby, I remember very specifically asking first "How could you possibly" or "Why can you possibly say that the Guild doesn't represent a majority." If I remember correctly, Bob's answer was, "Because we do." Then I said, "What evidence do you have for that? How could you say that?"

"It's true."

"You've got to have some reason for your statement."

And he said, "Because we said it. We honestly believe it's true" or "We believe it's true"and "We filed a petition" or "We are going to file a petition"; I don't remember which it was.

Q Mr. Lechner, how many times did you speak with a representative of our firm as being counsel to the Retired Persons Pharmacy concerning the matter that was going on in

the pharmacy during the life of the contract?
A During the term of the contract?
Q During the term of the contract.
A I can't honestly tell you the number of times. It could have been less than five. It could have been more than one. I have had a whole host of conversations in a span of a year and a half with Bob Lewis, with Peg Braden, over the phone about negotations, about difficulties in negotiations, about signing the contract, about other things. I really honestly cannot tell you how many times I spoke to them about grievances. As I told you, I never spoke to Bob Altman or any supervisory people at the firm about grievances because I would have felt and I did feel and still do feel that it would be unethical for me to do so.

MR. DARBY: No further questions.

JUDGE BOTT: Any redirect?

MR. HOPSON: Just one question, Your Honor.

REDIRECT EXAMINATION

Q (By Mr. Hopson) Do you recall having at least one conversation with the firm of Jackson, Lewis, Schnitzler & Krupman regarding a matter that was the subject of a grievance during the term of the contract?
A I seem to recollect that this is true, that I talked to them. I think I talked to them about the George Davis matter, number one. When the five or six employees were laid off,

towards the end of the contract, the Guild came to me and said "Was the layoff a proper one?"

MR. DARBY: Your Honor, I am sorry to interrupt the witness, but there has been no testimony about this on direct examination and no testimony about this on cross-examination. I think it is totally improper to bring it out at this time on redirect. It is totally unresponsive, also, to the question that was asked.

JUDGE BOTT: I think that is true.

MR. HOPSON: If I may speak before you rule?

JUDGE BOTT: What do you have to answer?

MR. HOPSON: He testified about a conversation he had with the firm and that was my question.

JUDGE BOTT: IF that is your question, it is difficult to rule on. If it is bringing up a new matter, it will be improper. If he is trying to remember what his conversation with the firm was, it is okay. I am going to let the testimony come in. It mean re-cross-examination.

Q (By Mr. Hopson) That is all I am asking: if you had any conversations?

A Yes. When you asked me if I had any conversation, it occurred to me that when there was a layoff, towards the conclusion of the contract, Guild officers called me and asked me whether it was proper because there was a question as to whether they have been laid off in order of seniority as the

contract provided. It is somewhere in the recesses of my memory that I talked to Ms. Braden about that to find out whether that was a seniority layoff. I know that I resolved whether it was a conversation with Ms. Braden or whether it was a conversation with the Guild officers who gave me the seniority dates. I know that I resolved it: It was not a contract violation because they had been appropriately laid off in order of seniority. They were the least senior people and hence the layoff was appropriate. I told the Guild officers that there was not any arbitrable grievance, as far as I understood.

MR. HOPSON: That is all I have, Your Honor.

JUDGE BOTT: You are excused. Thank you.

(The witness was excused.)

Call your next witness.

MR. HOPSON: Mr. Meszaros.

Whereupon,

JOHN VICTOR MESZAROS

was called as a witness, by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Hopson) State your name, please?

A John Victor Meszaros.

Q Where do you reside?

A 6524 Williamsburg Boulevard, ARlington, Virginia 22213.

Q How long have you been employed by the Retired Persons Pharmacy?

A Five years, and about five months.

Q Do you hold a position with the Guild?

A No, I don't.

Q Have you ever held a position?

A Yes, I have.

Q What was that?

A As a director, a member of the board of directors.

Q About how long and during what period of time were you a director?

From about the initiation of our becoming a Guild. It was probably when whatever the vote was; somewhere around that time. It was 1971, I guess November 1971, until about the middle part of June of this year, 1973.

Q Does the Board of Directors cover just this Employer or does it cover other employers?

A It covers the entire Guild itself, whomever the Guild represents. I am a member of the Board of Directors and I am involved in, I guess, the legislation regarding the Guild itself as an entity, as a total entity.

Q What other employees are represented by the Guild?

MR. DARBY: May I object to the relevance?

JUDGE BOTT: Yes. Let me see if I can help it. You are

trying to make the point, only that the board of directors of the Guild is multi-employer wide as far as jurisdiction, its power, goes; not that it just covers the employees of this particular respondent?

THE WITNESS: Yes.

JUDGE BOTT: It is not like a factory committee or employee committee; it is the governing body of a union as far as it is co-extensive with whatever jurisdiction it has.

Q (By Mr. Hopson) Mr. Meszaros, are there any other employees of Retired Persons Pharmacy who are on this Board of Directors?

A Yes. John Smith.

Q Within the respondent, does the Guild maintain any official bodies for that sort of thing?

A Yes. You mean, with regards to the organizational setup within the unit itself?

Q Yes; within this Employer's unit of employees.

A Okay. We have two particular committees. There are co-chairmen. One committee is the grievance committee, of which there are two co-chairmen. Also, there is a professional ethics committee, of which there are two co-chairmen.

Q Altogether, how many employees of Retired Persons Pharmacy are on each committee?

A How many employees are on each committee? It would be the two directors, plus the two committee chairmen per

committee.

Q Are there two directors on each committee?

A Ex-officio.

Q Does the Guild hold membership meetings?

A Yes, we do.

Q About how often?

A I believe they are required by our constitution to be at least three times a year and no less than 120 days between meetings; so, approximately four times a year.

Q Did you receive any kind of literature from the Guild as an employee?

A Yes, we do. We receive a bulletin that comes out approximately six times a year, approximately every two months I'd say.

Q Are you involved in any meetings, specifically limited to the Respondent's employees, any guild meetings with respect to just the Respondent's employees?

A Yes.

Q About how often do these occur?

A It depends upon the circumstances. I'd say probably the frequency depends upon what the issue is at the time. If we have a heated issue, there are lots of talks going on and we are trying to resolve something by more frequent meetings. If not, they will be less frequent.

Q The six months preceding April 19, 1973, during that time

approximately how many of these Retired Persons Pharmacy-wide meetings did you have in the Guild?

A Probably about a half dozen.

Q With just members of the Guild attending these or what?

A No, not everyone, but there were people that weren't in the Guild that did attend.

JUDGE BOTT: Where did you hold those meetings?

THE WITNESS: Right in the office, our office itself.

JUDGE BOTT: What do you mean by "our office"?

THE WITNESS: Retired Persons Pharmacy, within the office. It's a large room, Your Honor. It's about no bigger than this.

JUDGE BOTT: But it's the company's premises?

THE WITNESS: Right, but it's on our time.

JUDGE BOTT: During the day or after hours?

THE WITNESS: During the day, during our 15 minutes break in the morning or afternoon or lunch.

Q (By Mr. Hopson) How many people generally attend these meetings when you have them?

A I'd say probably around 20.

Q On April 19th of 1973, how many people were in the bargaining unit covered by the certification?

A April 19, 1973--

Q If you want, you can tick off the names of all of the employees in the unit around this date, just by their last name.

JUDGE BOTT: Why doesn't he do that mentally or to himself and then tell us what his total is.

He wants to know how many people were working in that pharmacists unit on April 19th.

THE WITNESS: I'd say 27, sir. There'd be some people leave and some people come.

Q (By Mr. Hopson) That includes yourself?

A Yes.

JUDGE BOTT: Do they work all the same hours?

THE WITNESS: Yes.

Q (By Mr. Hopson) Directing your attention to May 21, 1973, what happened on that date?

A On that date I was sitting at my desk working and approximately 8 o'clock about three people from management entered the room, went to the three pharmacists-- It was arbitrarily. I don't believe they went right down the row. They asked them to come with them. I didn't know what was going on at first. I was just sitting there doing my work. I noticed the supervisory people come in or management people come in and then leave and that was it. Then, after about six or seven minutes later one of the pharmacists who was taken out came back and reported to one of the individuals in the pharmacy and closest to him that they were being questioned by lawyers from NRTA-AARP and they were asking for information about the Guild.

They told me what several of the questions were. They told the other people what several of the questions were. The person was quite uptight and he was upset about it. That sort of was a chain reaction, I believe, because people on the other side of the belt, if I can refer to it that way, immediately got alarmed. They were very upset. They came up to me and told me to immediately get on the phone and contact our lawyer. I told them it was a little bit early, but I'll try to contact Dave Leise, who was the chairman of the board of the Guild. He would know where Ira is and get a hold of him.

So I called Ira Lechner and told him how upset the people were and they felt they were being almost goaded into telling or giving them information about the Guild and they didn't feel that this was right. I mentioned several of the questions and he wanted to know if the people who were doing the questioning were still there and I told him yes. He said he would call Ira and he would get back to me immediately. He hung up and I'd say no more than three or four minutes later I received a telephone call from Mr. Leise telling me to tell the rest of the individuals not to answer, but if pressured into it we should not tell the truth with regards to the questionnaire that was being asked from us.

MR. DARBY: Your Honor, I did not interrupt during this long testimony of the witness, but there were numbers of

occasions of conclusionary statements made by the witness during that response. There were a number of occasions of hearsay testimony, without any indication as to who was doing the speaking and to whom he was speaking. I would like to move to strike the whole testimony as being unresponsive and would request that possibly counsel for the General Counsel would elicit this from the witness in a more meaningful way of responding so that we could know who was asking the questions and who was making the statements and what was going on.

MR. HOPSON: I think this response was very responsive to my question.

JUDGE BOTT: What was your question?

MR. HOPSON: The question was, directing your attention to May 21st, what happened. He went into this thing and he was telling what happened. Counsel for respondent can certainly go into these matters, if they want to, on cross-examination. I think everything the witness has said has been perfectly responsive.

JUDGE BOTT: Counsel for Respondent is substantially right, although not totally. What the chairman of the board of directors told this witness outside of the presence of the respondent is not binding on the respondent. What the employees told about being shook up or uptight is not binding on the respondent. All this testimony I am permitting in only as part

of the chain of the attorney's advice to the union, to him and then his advice to the employees. If he gave no advice to the employees, this whole testimony isn't worth anything. I think that ought to protect the record from all sides of the table.

Q (By Mr. Hopson) Let me follow up with this question. What did you observe happen?

JUDGE BOTT: I am not striking your testimony.- Let me make this clear-- about what he observed. I think we all, as lawyers, know what we are talking about: what he observed about the three supervisors coming in and saying "Come with us" and they went in to some room. One man came back and he talked to another employee and then he made some telephone calls. The part about the telephone calls and the emotions and all of that, even if he observed them being upset, that is not particularly important. But I am permitting what he observed into the record. The other part goes out or it is admitted in not to prove the truth of it, but to explain his subsequent actions, if he had any.

MR. HOPSON: Your Honor, I would only try to elicit a bit more testimony about what he observed in the reactions of the employees.

JUDGE BOTT: But you have to get him off the telephone first. He is not observing when he is talking on the phone.

MR. HOPSON: Certainly, as to the truth of any matters

that came across the telephone, a first year law student knows the weight of that, I think.

JUDGE BOTT: Not if there isn't any objection. It all depends on whether it stays in the record or not. If hearsay gets in without objection, it's in. It is entitled to some weight.

MR. DARBY: Your Honor, I would like to object and ask that the phraseology of the expressions "uptight", "upset", which are truly conclusionary on the part of this witness, at least be stricken from the record.

MR. HOPSON: I wouldoppose that. These are his observations of the people right after the events that are the subject of this complaint. I think it is very relevant to show the impact that these questions would have on the unit employees. That is what I am trying to get to right now.

JUDGE BOTT: Do you think the impact on the employees is so awfully important as to whether they were coerced or not or upset?

MR. HOPSON: I think in this case--

JUDGE BOTT: I am not sure that I will rule, if it ever comes up. I am letting the record stand on what he observed. You can go into it on cross-examination.

Q (By Mr. Hopson) After your telephone conversation, Mr. Meszaros, what did you do then?

A What I did, I followed the advice of Mr. Leise through our

counsel and I went around and told everybody exactly what he told me. That was, don't answer, but if you feel that you have to or you feel that you are coerced or compelled to, don't tell the truth.

Q Were you yourself questioned on that day?

A Yes.

Q Describe that, if you will?

A Shortly after that I went back to my seat and I sat down and other people were going on in and going out of the office. There was a continuous chain of events. Then it was my turn. So Mr. Altmann's secretary came up to me and asked me if I would come with her. I said, "Surely" and I got out of my seat and I followed her. We went down the hall. We entered into Mr. Altmann's outer office. It's a large office adjacent to Mr. Altmann's office and has approximately four desks in it.

I was escorted and introduced to Mr. Harrison Darby. He shook my hand and asked me to sit down. In the meantime, Mr. Altmann's secretary left the room and we were there alone, by ourselves. Then Mr. Darby said, "I would like to read you a statement." It said something like, "My name is Harrison Darby, attorney for NRTA. The Guild has made charges against NRTA and I am gathering evidence to defend this charge." He said, "You are not under any-- You are not required to answer any of these questions and, if you wish to leave, you may."

My curiosity was aroused and I was extremely interested in finding out whether these questions that I was told by the other people that were being asked of them were true. So I asked Mr. Darby what the questions were. He proceeded to read about eight or ten of them and then he paused and looked at me and waited for a reply. I said, "Go on." He continued. He read probably about three or four more questions, pausing between each one and looking at me, waiting for a reply. I didn't reply. He said, "I guess we're not getting anywhere and you are not going to answer?" Isaid, "That's correct."

He said something to the effect, "It was nice meeting you" and "Goodbye." I asked him if I could have a copy of the questionnaire and he said "No, that is my only copy." I said, "Well, you have my name on it. I'm sure you must have other copies for the other individuals here." He said, "No, this is the only copy I have." So I said, "Thank you very much" and I got up and left.

Q Could you just briefly describe the work area of the unit employees?

A Yes. I would say that the entrance into the unit would be approximately where the door is in the corner. I would say the width would be about the same, the interior volume would be the same.

Q Would be the same as what?

A This particular room right here.

Q Could you give the dimensions? Just estimate it.

A I'd estimate it's probably 60 by 120, something like that. At the lower end of the room there is an adjoining open room. It's like a boot-shaped room so that it opens up at the bottom of the room itself. Now, running down the mid section of the room itself is a belt. This is a roller belt that is a moveable belt. The various pharmacists have their desks lined up adjacent to each other, up and down the main room itself.

Q Can you see all the other employees?

A You can see everyone in the room, yes. The desks are, I would say, probably around four and a half to five feet high and probably five feet high. I am six foot and I sit on a real high stool, so I can see and look around at everything normally sitting down. I can see all the time what's happening. I sit approximately in the middle, on the other side of the belt. By "the other side", I meant opposite the main aisle.

Q Prior to the time you were called in and asked these questions, what did you observe of the non-verbal reactions, if any, of the employees who had earlier been questioned?

MR. DARBY: I object to that.

JUDGE BOTT: Why is it relevant?

MR. HOPSON: I think in this case, although the wording of the statement, and perhaps you might even argue, some of the questions could be proper standing alone. The impact of this

document indicates just how coercive it was in its propounding to each employee or to the employees in general. I think it is very relevant to this particular case. I realize it isn't required to prove an 8(1) violation, but nevertheless, in this case, to understand the impact--

JUDGE BOTT: Let's assume that you had some of the employees on the witness stand and they described how they were questioned by one of the lawyers. Then you asked the question, were you coerced or frightened or intimidated by that questioning and an objection was made. What should my ruling be?

MR. HOPSON: I think you should allow it in for whatever it is worth. I think in this case it is worth more than the typical 8(a)(1).

JUDGE BOTT: Most of the cases say, the court as well as the Board, that it is the tendency of the conduct to coerce the employee rather than whether he actually was intimidated. Some people are more intimidated than others. Are we going to determine unfair labor practices on the basis of how much courage a particular employee has? I think not. I will sustain the objection. It is much faster this way too, which is another basis for overruling. It won't get you any place particularly, I think, legally. The locale of the questioning under the cases is important. Where it took place, what was said. The preliminaries, as in the statement,

G.C. 11; You are free to leave; You are under no obligation. This type of thing explains to the person why I am examining you. These are facts under the cases. But, as to mental attitude: no. You may go on.

Q (By Mr. Hopson) By the way, Mr. Meszaros, can you pinpoint exactly where the interrogations or the questioning of these employees did take place? Was it all inone room or did they use more than one room?

A From my understanding there were three areas--

MR. DARBY: I object to that.

JUDGE BOTT: Unless you know of your own personal knowledge, I'll sustain the objection. You can tell us where you were or where you saw anybody else. You were in an outer office, as I understood it?

THE WITNESS: Right.

JUDGE BOTT: Did you know whether any other lawyer was interrogating anybody else or talking to anybody else or interviewing anybody else at the time you were being interviewed?

THE WITNESS: Yes. I was told by other individuals they were interviewed and I was told their names.

JUDGE BOTT: We don't want that. The objection is sustained.

Q (By Mr. Hopson) Did you see where other employees were being taken?

A I couldn't, no. They left.

Q Did Mr. Altmann ever tell you where they were?

A No.

MR. DARBY: I will offer to stipulate as to the areas in which the interviews took place- in order to save some time and facilitate the proceeding.

JUDGE BOTT: I would be glad to have it because it is going to get into this record some way or another.

MR. DARBY: There were three areas in which the interviewing took place. Ms. Peggy Braden spoke with pharmacists in the library, which is on the second floor of the pharmacy. Mr. Robert Giovenetti, who is another attorney from the firm, spoke with pharmacists in the accounts payable or in the accounts receivable office on the second floor of the pharmacy and I spoke to the pharmacists ir what I understood to be the secretarial room on the first floor, to the left of the door, the entrance door, in the pharmacy.

MR. HOPSON: I am willing to stipulate to that.

JUDGE BOTT: The stipulation is noted.

Q (By Mr. Hopson) Mr. Meszaros, directing your attention to the latter part of May, 1973, did you become aware that your work hours were reduced or were going to be reduced?

A Yes.

MR. DARBY: Your HOnor, this is a stipulation also that has already been received and accepted.

MR. HOPSON: If you will allow me to go a little further, it will become apparent.

JUDGE BOTT: I will take your assurances for it. Go ahead.

Q (by Mr. Hopson) Do you recall?

A Yes.

Q How did you become aware that this had happened or was going to happen?

A I believe it was on May 29th. Mr. Eisman, who is our direct supervisor, walked through the pharmacy and he informed us that Mr. Altmann, our general manager, would like to say something to us. He made the announcement-- "he" being Mr. Eisman-- and asked us to gather to the rear of the pharmacy; that Mr. Altmann would like to make a statement to us or talk to us. Shortly thereafter, Mr. Altmann came in and told us, gathered everybody together, and told us that he would like to read a statement. It said something to the effect that in order to keep our policies flexible with the changes of time and every once in a while there is a need for a revamping of company policy, we feel that at this time it would be to the best interest of everybody involved that the hours be reduced from 42 and a half hours to 40 hours a week. I believe he said, commencing tommorrow, which would be on the 30th.

Then someone-- Ben Goldman asked if the wages would be

the same and Mr. Altmann replied, "I believe they will. We are checking on it now."

Q Were your wages ever altered?

A No. We were being given the same wage that we were getting for 42 and a half hours a week as we are getting for working 40 hours a week. The hours were reduced, but the wages are the same.

Q Directing your attention to the early part of 1973, did you receive a letter from Respondent relating to membership in the Guild?

A Yes.

Q Could you describe that?

A Generally the letter had reference to articles of our contractural agreement which we had between the Guild and the company. It had reference to the particular areas that dealt with an individual's eligibility to leave the Guild if he so desired, indicating that he had to do so-- I am not exactly sure-- it had to be 90 days prior to the termination of the contract.

MR. DARBY: Your Honor, may we again, to facilitate the trial, stipulate to the sending of this letter? I am also willing to introduce as a co-exhibit, if that is what counsel for the General Counsel would like, the letters which were sent to these employes.

JUDGE BOTT: I am sure we would all prefer to have the

letter.

MR. DARBY: Would you like to mark it as Respondent's Exhibit No. 3?

JUDGE BOTT: I think that would be fine, since it came from your file.

MR. HOPSON: Just as long as it is on our side of the case, it doesn't make any difference.

(The above document was marked Respondent's Exhibit No. 3 for identification.)

MR. DARBY: I offer it into evidence.

JUDGE BOTT: Are you satisfied it is all right?

MR. HOPSON: No objection.

JUDGE BOTT: Without objection, Respondent's 3 is admitted into evidence.

(The document, heretofore marked Respondent's ExhibitNo. 3 for identification, was received in evidence.)

Can we stipulate that it was sent to all unit employees?

MR. DARBY: The letter was sent to all pharmacists employed by the pharmacy, not only what would be unit employees. It was sent to all pharmacists.

MR. HOPSON: I am willing to stipulate to that.

JUDGE BOTT: It may not be of the greatest importance, but you have just confused me. Are there other pharmacists working for the Employer, besides the pharmacists in the

bargaining unit?

MR. DARBY: There are supervisory pharmacists here and I believe they were all notified by the letter. That's the only thing I am questioning. It was sent to the pharmacists, but there were also supervisory pharmacists who may have received the letter for their own edification.

JUDGE BOTT: Fine.

MR. HOPSON: We will stipulate to that.

Q (By Mr.Hopson) Mr. Meszaros, one further question. Are any of the officials or officers of the Guild paid a wage or salary for their position in the Guild?

A No.

Q To your knowledge, do they work within the units represented by the Guild?

A Yes.

MR. HOPSON: I have nothing further.

JUDGE BOTT: We will take our luncheon recess until 2 o'clock.

(Whereupon, at 12:50 p.m., the hearing in the above-entitled matter adjourned, to reconvene at 2 p.m., the same day.)

AFTERNOON SESSION

JUDGE BOTT: The hearing will be in order.

CROSS-EXAMINATION

Q (By Mr. Darby) Mr. Meszaros, you indicated that there were certain meetings conducted on the Employer's premises?

A Right.

Q Did you ask the permission of anyone from the Employer to conduct thesemeetings on the premises?

A No, I didn't.

Q Did you schedule the meetings in advance?

A Yes, I did.

Q How did you schedule them?

A What I did is, I typed up a note telling basically what the meeting was about, the location, the time, and it was always during our breaks or lunch periods. I passed it along, starting at the front where the pharmacists are, and had them pass it all the way down until it would make a complete circuit. Then I would check and make sure that everybody read the notice.

Q How would you check?

A What I would do is, I would ask the people if they had gotten the message yet, if they got the note passed around. They would ultimately say yes.

Q What were the dates of the meetings?

A I don't know what the dates were. I didn't keep any

logs of them.

Q Did you have formal agendas?

A A basic topic, whatever the topic was for discussion at that particular time. An issue was brought out, whatever the issue was; people wanted an explanation or what was going on. It was more or less a liason between the Guild and the members in the Guild within our unit. I would inform them of-- say, there was a D.C. Pharmaceutical meeting. I would discuss this upcoming event in conjunction with other affairs that were happening within the Guild. "There's going to be a meeting next week. Make sure you come to the meeting."

Q Did you do this while you were standing at your benches in the area?

A At my bench. They would actually gather around my bench.

Q Was anyone there who would be in attendance at this meeting, so to speak?

A Any of the pharmacists. They all got the message and they were all welcome to come.

Q Isn't this the area right at the benches where the pharmacists also take their coffee breaks?

A I don't know what you mean by that.

Q You say the pharmacists have coffee breaks in the mornings?

A Right.

Q And these meetings occurred during the 10 minutes coffee breaks; correct?

A Correct.

Q Periodically or whenever you had them?

A Right.

Q Isn't it also true that the pharmacists take their coffee breaks at their benches?

A At their benches, right, if they want to. They can go anywhere they want to, actually.

Q So that if an employee was there having his coffee break, would you say then that he was in attendance at your meeting?

A If he came over, if he was on the other side of the room, say in the front of the room that's where his normal desk was, and I was conducting a meeting and he came over with his coffee or donut or what have you and gathered around me very tightly, which they usually to, within a 20 feet radius, I would say no he is not taking his coffee break at his desk. He is coming over to listen to what is being talked about.

Q Did you talk about other things in addition? Did you talk about the weather?

A No: strictly matters of the Guild.

Q Did you keep minutes of the meetings?

A No, I didn't.

Q Did you have a parliamentarian?

A No. These were informal sessions.
Q They were coffee breaks?
A These weren't coffee breaks put on by me. This was-- We regularly have two breaks during the day; three, actually. We have a coffee break now from 9:30 to 9:45 in the morning. We have a lunch hour for a half hour from 11:30 to 12 o'clock and in the afternoon we have one from 2 to 2:15. During this particular time we could do whatever we want to do. We could go outside. We could go to the store and get something to eat, some ice cream. We could do whatever we liked.
Q Did you keep any records as to who attended these meetings?
A No.
Q How many people attended?
A I know there was a majority. I would say approximately 20.
Q What were the names of the people that attended the meetings?
A Each one of these meetings? You want me to go through them?
Q Did all 20 attend all 5 or 6 meetings?
A No. There were people absent.
Q So, when did you have the first meeting that supposedly was held? Was it six months ago or three months ago?
A It was whenever an issue came up. I'm trying to think

of the last one I had. I know there were quite a few during the negotiation of the contract. As a matter of fact, after each session we would have a meeting and I would briefly run down what occurred at the negotiating sessions. So there were quite a few in the summer of '72.

Q The contract was signed on September 1, 1972. After September 1, 1972, how many meetings of this sort were held during the coffee break times?

A I am trying to think if there was an issue. We would have a coffee break-- One issue was George Davis. I know we had at least two meetings concerning George Davis.

Q Was George Davis terminated after the contract was signed?

A I am not sure.

Q After September 1st, what other meeting do you recall occurred?

A I can't recall any.

Q There were no meetings held after September 1, 1972?

A No, I can't say that. I believe we did have meetings, but I can't recall what they were about.

Q When were they?

A I don't know. I don't recall what the dates were.

Q How many?

A Probably about a half a dozen.

Q You said you circulated a notice to the pharmacists?

A Right.
Q Did you retain copies?
A Unfortunately, I didn't.
Q Do you know if anyone else maintained copies of this?
A No.
Q You never bothered putting this into any sort of minutes?
A No.
Q Could you possibly talk to any of the pharmacists as to whether or not they have copies of these notices that were circulated?
A No. There was only one notice that was being circulated. It wasn't a series or several notices. One notice, I would type up and then I would put it into one of our carrier boxes and then I would give it to the first pharmacist and ask him to pass it back. It indicated on the note to pass it back.
Q So this possibly was even done without the supervisory people in the pharmacy knowing that this notice was being passed around; is that why you put it in the boxes?
A No, it wasn't on account of that. Instead of me going around to every person in the pharmacy and saying "We are having a meeting", this is one way of passing the word without having to interrupt from my work. It would probably take me 10 or 15 minutes to go around to each individual and say, "We are having a meeting at 10 o'clock." It's very simply to type

a little message on a note and stick it in the box and give it to the first person and have them pass it back. It has to go through 30 people.

Q You have indicated that possibly there still again, after September 1 1972, may have been five or six meetings. You don't recall the dates of the meetings; correct?

A Right.

Q You don't recall exactly what was discussed at those meetings?

A Right.

Q Who attended the first meeting?

A It's sort of hard to recall. I know quite a few of the people that attended, but I couldn't say for sure because we had several.

Q Who attended the second?

A I don't know for sure. I didn't take any logs or write down people's names as to who attended. I just know that the great majority of the people were pharmacists in the MRTA unit and they came to my desk and listened while we were talking.

Q What did they talk about while they were at your desk?

A I actually was primarily talking and telling them, giving them information as to what was occurring.

Q About what?

A About Guild matters.

Q What matters?

A Anything. In particular, I just can't recall at this time.

Q How large is your bench area?

A I'd say my desk is about the same width as your table.

Q Maybe about four feet, three feet?

A About three feet. The length of it is about a foot longer than that: maybe eight feet. The area in back of me is about as large as where you are.

Q Which is only maybe also another three feet?

A Right.

Q And there is also generally a bench in front of you; right?

A In the back of me.

Q And then there is a bench on the other side of you also; right?

A Correct.

Q How did you get the 20 people all bunched around you in these meeting s that you had since September 1, 1972?

A They would jam in where I was. I'd be right about in the middle. They'd jam in the back of me. I take that back. I'd get against the wall, which was over on this side and I would speak out this way (indicates), so that I could speak to the people that were in and around my desk, the people in front of it and the people in back of it. They usually jammed together. Then the people on the other side of the hall were

jammed forward so that I could speak to them and they could hear me.

Q Are you sure that these meetings weren't held prior to September 1, 1972?

A I am sure most of them were.

Q Most of the five or six?

A No. I'd say probably part of those-- We had more than five or six. We had about eight or ten. Mostly they were with regards to negotiations.

Q How would you know when somebody came back from his own bench area to see just what was going on, as to whether or not that person was truly attending a meeting or just interested in whatever might be going on in the coffee clutch back there.

A Because they were listening. They were attentive.

Q Did some of the people stay at their own benches?

A Sure.

Q How many stayed at their own benches?

A I don't know. I couldn't say that.

Q So that some of these people might not have been attending the meeting when they actually stood around the benches?

A Some of the people. Yes, I would say so.

Q Did you ever report to any of the supervisory people in the pharmacy that these meetings were going on?

A No.

MR. DARBY: No further questions.

JUDGE BOTT: Any redirect?

MR. HOPSON: No. That is all, Your Honor.

JUDGE BOTT: You are excused. Thank you.

(The witness was excused.)

MR. HOPSON: Mr. Woods.

Whereupon,

PAUL H. WOODS

was called as a witness, by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Hopson) Mr. Woods, state your name, please?

A Paul H. Woods.

Q Your address?

A 4737 Queens Chapel Terrace, Northeast, Washington, D.C. 20017.

Q Mr. Woods, I understand you have a hearing aid, so I'll try to speak up. If you don't hear me, be sure and speak up.

How long have you been employed with the Respondent?

A I'd say about four years.

Q Do you hold any official position with the Guild?

A I am a member of the grievance committee for the NLRA branch.

Q How long have you been on the grievance committee?
A Since last fall.
Q During the term of the contract, have you had occasion, in your capacity with the grievance committee, to be involved in any grievances?
A Yes.
Q Could you describe some of these?
A The items or the procedures?
Q The items.
A We encountered a problem at one point where mail directed or intended for the pharmacists was being opened. It was brought to the attention of the members of the grievance committee that this mail was not being opened by machine in the mail room, as we would have thought being opened by accident, but the mail had been separated by hand and possibly opened by hand, which actually suggests censorship or something of the sort. This constituted a grievance.
Q When did this occur?
A Ouch. I can tell you this occurred some time prior to the November 11th because I noticed in my notes that there was a notation of November 11th where a meeting with Mr. Altmann, Mr. Silber and Skowski and Mr. Leise and Mr. Freidman.

MR. DARBY: Could we have the year on that? November 11th of what year?

THE WITNESS: '72.

Q (By Mr. Hopson) Was the meeting in regard to this particular thing?

A That was one item. I didn't mean to get that far ahead of myself. The issue was first discussed when Mr. Skowski and I first discussed it with Mr. Brault. Any time we couldn't resolve any differences with Mr. Brault then we were advised that we should approach Mr. Altmann.

Q Who is Mr. Brault?

A Mr. Brault was at that time the pharmacists supervisor.

Q Who is Mr. Skowski?

A Mr. George Skowski is the pharmacist in the unit who is another member of the grievance committee.

Q Can you think of any other instances where you have been involved with a grievance.

JUDGE BOTT: Let's wrap this one up first. You and Skowski discussed the grievance in the first instance with Mr. Brault; is that what you are saying?

THE WITNESS: Yes. There was a situation over which--

JUDGE BOTT: Please. I am just trying to get the chronology. You indicated that something happened before November 11th. What happened before November 11th? Was that the discussion?

THE WITNESS: Obviously, in this case, yes.

JUDGE BOTT: This is the only case I want to talk about now. If we don't get this straight, we are not going to get

any of them.

You indicated that at some time you had a meeting with Mr. Altmann. Did you indicate that?

THE WITNESS: This would have been subsequent to the 11th because my notes show the 11th; at least, just prior to the 11th of November.

JUDGE BOTT: What is it: you met with Mr. Altmann-- Who met with him?

THE WITNESS: May I go back, Judge, please?

JUDGE BOTT: If it will make it clearer.

THE WITNESS: Initially, Mr. Skowski and I approached Mr. Brualt concerning the problem of having our correspondance opened and not delivered directly to us unopened. Mr. Brualt at this point-- This was beyond his control. Any time Mr. Brualt could not resolve any differences then we are advised that a next step would be to approach Mr. Altmann. Obviously, we had approached Mr. Brualt a day or two prior to the 11th that I mentioned because we found it was necessary to discuss the matter with Mr. Brualt in a formal meeting with Mr. Laise, Mr. Friedman, Mr. Silber in attendance. But at that meeting, I remember, there were three items discussed. There were the two grievances discussed. This could very easily have been the result of several things building up to a single session with Mr. Altmann.

JUDGE BOTT: But you did have a session with Mr. Altmann,

you say. Were there three other management representatives present?

THE WITNESS: Mr. Zilber is the only other management representative I can recall.

JUDGE BOTT: But you did meet with Mr. Altmann?

THE WITNESS: Yes.

JUDGE BOTT: And you think that this grievance was mentioned and you think there were two or three others?

THE WITNESS: There were two others at that time.

JUDGE BOTT: You had possibly an accumulation of matters to discuss?

THE WITNESS: Yes.

JUDGE BOTT: You can cross-examine on anything. You can continue from there.

Q (By Mr. Hopson) When did this meeting occur with Mr. Altmann?

A I would say approximately VEteran's Day.

JUDGE BOTT: One last question. Who was with you, if anybody?

THE WITNESS: Mr. Skowski.

JUDGE BOTT: I mean, from your side.

THE WITNESS: Mr. Skowski.

JUDGE BOTT: Just the two of you then?

THE WITNESS: Then we had Mr. Leise, who was the chairman of the board for the Guild, and Mr. Freidman, who was the

chairman of the Guild's grievance committee at large.

JUDGE BOTT: You have four union representatives at that meeting?

THE WITNESS: Yes, sir.

Q (By Mr. Hopson) And this would have been around Veteran's DAy 1972?

A Yes.

Q Do Mr. Leise and Mr. Freidman work in the Retired Persons Pharmacy?

A No, sir.

Q Where do they work?

A They are Drug Fair employees, but officers of the Guild.

Q Did you have any other grievances after this meeting involving either Mr. Altmann or Mr. Brualt?

A That is the only occasion that we found it necessary to discuss anything with Mr. Altmann. All other situations had been resolved by working with Mr. Brualt. We had what I consider a good line of communication. We were able to discuss, just about every instance we resolved any differences that occurred. This meeting with Mr. Brualt I mentioned earlier was possibly the second or third occasion that we would have had to go and discuss matters with him. There were things like the air conditioning not functioning. We would have reason to question having it turned up. We'd go in to say to Paul that we had a problem and he would sit down and

discuss it and almost instantly we got resolutions of difficulties. There was no real difficulty that I could envision.

Q On these occasions when you went in to see Mr. Brualt about the air conditioning and that type of thing, was this pursuant to a complaint from anybody?

A Yes. There would be a situation where one of our co-workers would come to us and say "I've got a problem" and he would describe the air conditioning system wasn't working and so on.

"Could you approach Mr. Brualt about this"and we would do so. His door was always open. There was never any attempt to inhibit communication. WE could go in and tell him what our problem was. He didn't always agree with us, but at least we could communicate beautifully. We would resolve the problem.

There was one occasion when we were questioning someone drawing boxes after a certain hour because we felt it was an unfair distribution of the work. We discussed it with Mr. Brualt. He pointed out the error of our ways and we accepted his counsel.

Q When was that?

A I hate to think it, but I almost have to ask Paul on that one. That was early this year. I'd say after the first of the year. Situations of this sort we were always able to

resolve.

Q And this meeting with Mr. Altmann back in November of '72, you said there were three issues you discussed. You named one of them. What were the other two?

A One issue was the fact that there was some question that has been raised by members of the unit that our insurance processing procedures were faulty. There was some question as to the efficiency of the individual operating this and we discussed it with Mr. Altmann who hastened to defend the young lady and who felt that any information we needed that she could not provide, that we should feel free to come to him to receive that information.

The third item I had on the top of my head a moment ago and now it's an aching void. Mr. Hopson, it simply escapes me completely.

Q After this meeting with Mr. Altmann and up to, let's say, April 1973, about how many times did you meet with Mr. Brualt as the grievance committee?

A I would hazard a guess, three or four, but the situations were so easily reconciled that you would almost be loath to describe them as "grievances" although we followed the procedure as outlined by the Guild for negotiating any difficulty. We would go in and explain what our problem was and he would take care of it.

MR. HOPSON: Your Honor, this witness could testify as

to the alleged interrogation as well as the unilateral change, which we contend also violated the Act. But I don't believe it is necessary that we go into that since it does not appear that there is too much dispute about those facts.

JUDGE BOTT: That is your problem.

Q (By Mr. Hopson) Mr. Woods, directing your attention to May 21, 1973, were you involved in questioning of employees by a law firm representing the Respondent?

A Yes.

Q Could you describe that?

A Stanley Goldberg came to my desk and told me-- asked me would I kindly go with him.

Q Who is Stanley Goldberg?

A Assistant Comptroller of the Company. He was at that time. I don't know what position he is in now. He escorted me into the office where Mr. Darby was waiting, introduced himself and read a prepared statement that indicated that he was an attorney retained by NRTA-AARP to defend themselves in some procedure. Immediately, when he said "defend", this really got through to me because I am suddenly placed in an adversary position. The last thing in the world I wanted to be, because I have always regarded myself as an employee of, a successful individual and one desirous of-- towards the success of anything the company was engaged in. I resented--

MR. DARBY: Your Honor, I would like to object to the

last part of the witness' answer: considering. They are all natural considerations of the witness and are totally irrelevant and unresponsive to the question that was posed to him.

JUDGE BOTT: As much as I appreciate your deep feeling, Mr. Woods, in the matter-- and, believe me, I think I may understand them-- it really is irrelevant and I will sustain the objection.

THE WITNESS: Now, where was I?

JUDGE BOTT: What did they say to you?

THE WITNESS: Mr. Darby indicated that he may ask me some questions; I may feel free to leave the room at any time; that he would appreciate my answers. Of course, by then I had been prompted, for lack of a better word, by Mr. Meszaros as far as the ideal procedure for our position was concerned.

He asked me if I was a member of the Guild. I refused to answer. He asked me if we had regular meetings and I couldn't answer that either. But by the third question, I think Mr. Darby assumed that it was an exercise in futility for both of us. He thanked me for coming in and excused me.

Q (By Mr. Hopson) Mr. Woods, where did these meetings take place that you had with Mr. Brualt?

A Mr. Brualt's office.

Q And the meeting with Mr. Altmann?

A That took place in the front office, Mr. Altmann's office.

Q Did you attend any of the meetings that Mr. Meszaros has testified to?

A I think I attended all of them.

Q Could you describe the procedure of what would happen?

A As he said, by arranging ourselves in something of a "U" shape, it was quite possible to get 20 people within the confines of the three desks. First of all, there would be the pit where Vic would be working. There would be the pit where the person in front of him works and the gentleman behind him. But having a circle and filling in those three gaps, you could get the people; plus the fact, anyone on the opposite side of the belt, you had three additional bays that were accessible and it was not inconceivable that all 30 pharmacists could have been confined within the sound of Mr. Meszaros' voice when he was communicating progress reports.

Incidentally, some of the meetings did involve such things as the result of our discussions with Mr. Brualt, the result of our discussions with Mr. Altamann: the fact that we had reached an agreement, that we had established rapport, that we were communicating or what have you.

Q You said some of the discussions were at these meetings?

A One instance that I recall specifically was the case where we were discussing mail. We found it necessary to discuss the matter with Mr. Altmann. He had indicated in the

conference that he could not guarantee 100 percent cooperation. He would like very much to, but he would see that a concerted effort was made. One pharmacist's mail-- they happened to be a member of the Board and see to it that Ms. Shallow's mail was at no time opened in the mailroom or in his office or any place in the building. But he would not guarantee for the remainder the same certification. However, he would try to see that precaution was exercised and I recall the specific statement that I made, "Mr. Altmann, I would appreciate finding an 80-20 relationship, where 80 percent of the mail is unopened and 20 persent could possibly be"and he agreed with this.

Q This is back in the meeting of November 1972?

A This is the information that was communicated to all of us in the meetings that Mr. Meszaros described around his cell.

Q How many meetings would you estimate that you attended at Mr. Meszaros' desk?

A Since the first of the year?

Q Since September of 1972 to the present?

A Since these were not formal meetings, the only formal meetings are held in the Guild at large. These were information sessions and no records were kept in these. I would be reluctant to hazard a guess. It could be anywhere from six to a dozen. I certainly would feel that there would have been a minimum of half a dozen and possibly double that number, during

the period you mentioned.

JUDGE BOTT: You said you were a member of the grievance committee. Is there such a thing as a shop steward too?

THE WITNESS: No, sir. The ethics committee and the grievance committee in our unit, those are the two standing committees.

Q (By Mr. Hopson) Is there another grievance committee for Guild-wide purposes?

A Guild-wide, Mr. Friedman is the chairman of that committee.

MR. DARBY: Who is Mr. Friedman?

THE WITNESS: Benjamin Friedman is a pharmacist employed by Drug Fair who is the chairman of the grievance committee for the Metropolitan Guild of Pharmacists.

Q (By Mr. Hopson) That is Guild-wide?

A City-wide, area-wide committee.

JUDGE BOTT: Is there anything else?

MR. HOPSON: That is all I have, Your Honor.

JUDGE BOTT: Mr. Darby?

CROSS-EXAMINATION

Q (By Mr. Darby) At these meetings when you go into Mr. Brualt's office, you indicated you walked into Mr. Brualt's office some times and you spoke to him about things that might have been going on. Were there any representatives of the Guild itself, the organization?

A Mr. Skowski and I are both members of the Guild.

Q But there were no outside people that came in to speak with Mr. Brualt and yourself.

A The only occasion when non-NRTA employees were present was the instance I mentioned with Mr. Altmann.

Q Which was in November of 1972?

A Yes.

MR. DARBY: I have no further questions.

JUDGE BOTT: I have one question. When you were interviewed by Mr. Darby and he asked you a few question and you sort of mutually called it off, did Mr. Darby indicate in any way or give you any impression of anything he said or did that he knew what your status was as a representative of the Union? Did he indicate that he knew you were a member of the grievance committee?

THE WITNESS: I don't recall anything he said that would have suggested this to me. The only thing I can remember is writing my name at the top of a piece of a paper as we terminated the discussion. But I don't recall.

JUDGE BOTT: Thank you. You are excused.

(The witness was excused.)

MR. HOPSON: Your Honor, at this point I would like to make a slight addition to one of the exhibits, to fill in the blank. On General Counsel's Exhibit No. 2, there is a blank referring to the exhibit number and that will be 11(a) through

(c).

JUDGE BOTT: Physically correct the exhibit.

(The exhibit was physically corrected.)

MR. HOPSON: I call Mr. Altmann.

Whereupon,

ROBERT C. ALTMANN

was called as a witness, by and on behalf of the General Counsel, and having been first-duly sworn, was examined and testified as follows;

DIRECT EXAMINATION

Q (By Mr. Hopson) State your name, please?

A Robert C. Altmann.

Q Your address?

A 2107 Pliers Mill Road, Silver Springs, Maryland.

MR. DARBY: Your Honor, may I interject a moment to make the record clear. Is Mr. Hopson examining Mr. Altmann at this time as a 43(b) witness?

JUDGE BOTT: That would depend on what kind of foundation he lays. If you will agree that he is a managing agent, he probably would.

MR. DARBY: We will.

JUDGE BOTT: There is no question about it. To save time, he is the top manager.

MR. LEWIS: Is that Mr. Hopson's position?

JUDGE BOTT: Are you going to examine him as a 43(b)?

MR. HOPSON: Yes, I do want to examine him as a 43(b).

JUDGE BOTT: You may. Go ahead.

Q (By Mr. Hopson) Mr. Altman, how long have youibeen employed by the Respondent?

A About 12 years.

Q Are you familiar with the petition filed on your behalf with the Labor Board in April of this year, seeking an election?

A Yes, sir.

Q Do you know whether Respondent or anyone acting on its behalf submitted any showing of interest, any evidence to support the position that the Guild no longer represented a majority, to the Labor Board in connection with that petition?

A I do not know, sir.

Q Who would know?

A I don't know that either.

Q Who represented you in that case?

A Mr. Robert Lewis.

Q Are you familiar with the charge that was filed by the Guild and is the subject of this proceeding?

A Yes, sir.

Q Do you know whether, in defense of that charge, any evidence, any showing was submitted by the Respondent or by anyone on its behalf to indicate that the Guild no longer

represented a majority, submitted to the Board?

A I do not know that either, sir.

Q Who would know?

A I don't know that.

Q Who represented you in that case?

A Mr. Robert Lewis.

MR. HOPSON: That is all.

JUDGE BOTT: Do you have any questions?

MR. LEWIS: No, we do not have anything.

JUDGE BOTT: You may step down.

(The witness was excused.)

MR. HOPSON: Mr. Lewis.

Whereupon,

ROBERT LEWIS

was called as a witness, by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Hopson) Mr. Lewis, would you state your name, please?

A Robert Lewis.

Q And your address?

A My office address is 11 West 42nd Street, New York, New York.

MR. DARBY: Your Honor, I would like to interject again

at this point to ascertain whether or not Mr. Hopson has called Mr. Lewis to the stand as a 43(b) witness.

MR. HOPSON: I intend to elicit information which I believe will be binding on Respondent and I believe that it would be an admission as to material facts that I intend to elicit.

JUDGE BOTT: I think you ought to examine him without raising the 43(b) question. Originally, I will only ask him to ask questions of the witness as if he were his own witness.

Q (By Mr. Hopson) Mr. Lewis, did you represent Respondent in connection with an RM petition filed on Respondent's behalf in April 1973?

A I did.

Q Are you familiar with the case?

A What case?

Q The RM petition case?

A Yes.

Q Was the petition signed by you?

A I don't recall.

Q Was it signed by the Respondent's official, Mr. Altmann?

A I have no recollection.

MR. DARBY: Mr. Bott, I would submit the petition into evidence, if this is what Mr. Hopson wants. It certainly is an official record or document of the Board, the petition that we did file.

JUDGE BOTT: I don't know whether he is testing the witness' memory or not. I am lost. We have every other piece of paper in the file in the case. I don't know why the petition wasn't in.

MR. HOPSON: I am willing to put it in; no problem.

MR. DARBY: I do have a copy of the petition which was filed on the 19th of April, even though I do not have the date on it, except for a handwritten date. It is not the official one and it was signed by Ms. Peggy Braden.

JUDGE BOTT: Put it in as General Counsel's Exhibit 12, the petition, the RM petition filed on the date indicated.

(The above document was marked General Counsel's Exhibit No.12 for identification.)

Q (By Mr.Hopson) Mr. Lewis, I show you what has been marked as General Counsel's Exhibit 12 and I would like to ask you if, to your knowledge, any evidence, any showing of interest was submitted along with the petition to the Labor Board?

A It's my understanding of the law and the Rules and Regulations of the National Labor Relations Board that when an RM petition is filed by an employer, no showing of interest is required.

Q So your answer would be "No"?

A The answer is No.

Q In connection with the charge which is the subject or part of the subject matter of this case, did you represent

Respondent in connection with this case?

A Yes, I did.

Q To your knowledge, during the investigation of this case, was any evidence submitted on behalf of the Respondent to buttress its position that the Guild no longer represented a majority?

MR. DARBY: I object to that question, Your Honor.

JUDGE BOTT: On what grounds?

MR. DARBY: It does go to the issue of the defense of this matter. The Charge had been filed and I do not believe that the law required anything to be done at that point of time. I don't see the relevancy of the questioning of the witness as to whether or not, simply because a charge had been filed, the company submitted to the Board anything to support its position at that period of time.

JUDGE BOTT: I am inclined to agree with you, particularly since the person being examined is counsel for the Company, who had the obligation to make a decision as to how he wanted to proceed in the case. I am not going to infer that,by making the decision that he did, he didn't have any evidence.

MR. HOPSON: Your Honor, the only point to my question -- I don't say that we don't know what the evidence is because that might indicate what happened-- but the only point of my question is an attempt to show a lack of good faith on the part of the Employer in this matter. It starts back on

April 19th and continues to day.

JUDGE BOTT: I know what you are trying to show. If you were doing it through somebody else-- First, let me go back a step. By and large, generally speaking, the matters you are going to are part of the Respondent's defense, basically. I won't say that through a different technique you might not have been able to attack this. I am not going to suggest what it is, but I am not going to let you do it through counsel for the Respondent. As I repeat, I am going to presume, unless I am shown otherwise, that he made a lawyer-like decision on how to defend that case before the Board. That is a lawyer's job to do. That doesn't mean that his client was or was not in good faith. I sustain the objection.

MR. HOPSON: That is all.

JUDGE BOTT: Thank you.

(The witness was excused.)

The petition is received, not having heard any objection.

(The document, heretofore marked General Counsel's Exhibit No. 12 for identification, was received in evidence.)

MR. HOPSON: That is all, Your Honor.

JUDGE BOTT: Does the Union have any testimony or evidence?

MR. LECHNER: No, Your Honor.

JUDGE BOTT: I take it the General Counsel and the Union rest?

MR. HOPSON: Yes.

MR. LECHNER: Yes.

JUDGE BOTT: Is Respondent ready to proceed?

MR. DARBY: Yes, I am, sir. I would like to call Mr. John McHugh to the stand at this time.

Whereupon,

JOHN R. McHUGH

was called as a witness, by and on behalf of the Respondent, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Darby) Mr. McHugh, by whom are you employed?

A Retired Persons Services, Incorporated.

Q In what capacity are you employed by Retired Persons Services?

A I am the National Manager of the NRTA-AARP Pharmacy Service.

Q What does that stand for?

A National Retired Teachers Association- American Association of Retired Persons.

Q How long have you been associated with the pharmacy?

A Since November of 1972.

Q Were you affiliated with the pharmacy prior to that date?

A No, I was not.

Q Do you have an office?

A Yes, I do.

Q Where is your office located?

A 1750 K Street, Northwest, Washington, D.C.

Q Would you state for us your responsibilities as director or national manager of the pharmacy?

A In my capacity as national manager, I have the supervision of the five pharmacies operated by the NRTA-AARP.

Q Where are these pharmacies located?

A Washington, D.C.; Hartford, Connecticut; St. Petersburg, Florida; Kansas City, Missouri; and Long Beach, California.

Q Were you affiliated with the pharmacy before your association with it in November of 1972?

A No, I was not.

Q Did you know that it existed?

A Oh, yes.

Q How did you know that?

A I have been very active in pharmacy affairs in the Washington Metropolitan Area for some 26 years. An operation of this size certainly would not go undetected by almost any pharmacist and particularly my previous responsibilities.

Q Where is the operation in Washington located?

A The pharmacy operation?

Q Yes.

A At 1224 24th Street, Northwest.

Q Is that relatively close to your office?

A Yes, just a few blocks.

Q Do you know who the manager of that location is?

A Yes, I do: Mr. Robert Altmann.

Q Since you became affiliated with the pharmacy in November of 1972, have you had the opportunity to discuss various mattters with Mr. Altmann?

A Yes, I have. Since my office is here in Washington, I have visited the pharmacy at least once or twice a week and I was in almost daily telephone contact with Mr. Altmann.

Q What kind of conversations or discussions concerning the Washington location have you had with Mr. Altmann? What did it involve?

A Almost anything you could imagine in relationship to the operation of the business.

Q Did Mr. Altmann ever discuss with you or make you aware of the fact or advise you of the fact that the Washington location had a collective bargaining agreement with the Metropolitan Guild of Pharmacists?

A Yes, he did.

Q Did Mr. Altmann ever advise you of the fact that as to who negotiated the agreement?

A Yes. He had told me that the firm of Jackson, Lewis, Schitzler & Krumpan had represented the pharmacy for many

years and they would be representing us again under the new contract negotiations.

Q Did you ever meet with anyone from the firm?

A Yes, I did.

Q Do you recall the first person that you met from the firm?

A Mr. Louis Jackson, the senior partner, and yourself, Mr. Darby.

Q Do you recall when you met us?

A That was in late February.

Q Of what year?

A 1973.

Q Do you recall the purpose of our meeting?

A Yes. Since the Jackson firm was to represent us, the contract would be opening up in March, I wanted to meet Mr. Jackson. I assume he wanted to meet me.

Q For what purpose?

A To discuss labor relations. Also, to meet me as the new head of the pharmacy service and Mr. Jackson also informed us at that time-- Am I getting ahead? Mr. Jackson informed us that there was a requirement under the contract that we inform all of the pharmacists of their right to withdraw from the Guild.

Q When was this meeting held with Mr. Jackson and myself: the latter part of February?

A Yes.

Q Where was this meeting?

A In my office.

Q Who was in attendance at this meeting in your office? Who, if anyone, in addition to yourself, myself and Mr. Louis Jackson of the firm?

A Mr. Robert Altmann.

Q You indicated that the purpose of the meeting was in order for Mr. Jackson to meet you and for you to meet Mr. Jackson; is that correct?

A Yes.

Q Do you recall what was discussed at that meeting?

A Yes. We discussed this letter that I just referred to that was to be sent out. I also discussed some possible draft language. In fact, Mr. Jackson, I believe, dictated some language to yourself.

Q Did Mr. Jackson indicate why this letter should be sent out to the pharmacists?

A Yes. He said this was part of the contract. It was an employer obligation to do this.

Q Did you see a copy of the letter?

A Yes, I did.

Q I show you what has been marked as Respondent's Exhibit No. 3 into evidence. Is this the letter that was eventually sent out following that meeting?

A Yes.

Q Did Mr. Jackson ask you at all about your background, your previous experience, before coming on to the pharmacy?

A Yes, he did.

Q What did you tell him?

A I explained my background in pharmacy affairs and my previous position with People's Drug Stores and my responsibilities and just general conversation about what was going on in the area. We did also discuss at this time what the pharmacists' rates were in some other competitive employers. We also discussed at this time the possibility of reducing our hours.

Q What did Mr. Jackson say about the possibility of reducing thehours?

A He said that as far as the pharmacists were concerned we would have to discuss this with the Guild during the period of the contract. We could not do it without discussing it with them.

Q Was there anything else discussed at that meeting?

A Yes. We discussed the Employer's responsibility when he doubted that a union represented or enjoyed the support of the majority of its employees.

Q How did that discussion arise?

A Mr. Altmann had previously told me that he doubted and he had been hearing reports from the pharmacists that they

no longer wanted the Guild to represent them or they felt the Guild no longer did enjoy the support of the majority of the pharmacists.

Q Did Mr. Jackson indicate anything in response to that?

A Yes. He advised me and Mr. Altmann as to what the law was on this. He said that an employer who doubted it could file a petition for an election or he could refuse to bargain and he also stated what a union could do.

Q What did he say about that?

A He said the union also could file a petition for an election; they could file an unfair labor charge on a refusal to bargain; or they could strike.

Q How long did thatmeeting last?

A A little more than an hour perhaps. No more than an hour and a half.

Q What time was this meeting over?

A I am not sure, but I had a luncheon appointment at noon. I believe you and Mr. Jackson also had an appointment somewhere. So it was over before noon or approximately noon; at least around that time. Excuse me. I believe my appointment was 12:30.

MR. DARBY: I have no other questions.

Excuse me. Yes, I do have another question.

Q (By Mr. Darby) In regard to the fact that there was a discussion at the 27th of February meeting, it was concerning

the changing in the hours for pharmacists; correct?

A Yes.

Q Did you have any discussions prior to the meeting with anyone at the Washington location as to why the hours for the employees for that location should be changed?

A Yes.

Q Who did you have the discussions with?

A Mr. Altmann.

Q What was said concerning the change in the hours?

A I believe Mr. Altmann brought it up to me.

MR. HOPSON: Objection. Hearsay. If he is going to relate to what Mr. Altmann said to him about this material point, especially as to the basis for this unilateral change.

JUDGE BOTT: It is hearsay, of course, and it doesn't seem to explain any action he took.

MR. DARBY: I am offering it not for the truth of whatever Mr. Altman said, because obviously Mr. Altmann is also going to be a witness here, but in some way to corroborate this evidence. Since this witness was involved eventually in the decision, as Mr. Altmann's immediate superior, I think the background as to the reasons for it are certainly relevant.

JUDGE BOTT: I think not, even if he had the best reason in the world. If he had an obligation to bargain with the Union, it would have been an 8(5). If he had no obligation,

it wouldn't have been 8(5) if his reasons were without merit. Objection sustained.

MR. DARBY: I have no further questions.

JUDGE BOTT: Cross-examination?

CROSS-EXAMINATION

Q (By Mr. Hopson) Mr. McHugh, did you say the meeting which you had with the attorneys from Jackson, Lewis, Schnitzler & Krupman occurred on February 27, 1973?

A Yes.

Q That is the date of the meeting you have been testifying about?

A Yes.

MR. HOPSON: That is all.

JUDGE BOTT: You are excused.

(The witness was excused.)

MR. DARBY: I would like to call Mr. Robert Altmann to the stand at this time, please.

Whereupon,

ROBERT ALTMANN

was called as a witness, by and on behalf of the Respondent, and having been previously sworn, was examined and testified as follows:

JUDGE BOTT: You have previously been sworn. You are still under oath, Mr. Altmann.

DIRECT EXAMINATION

Q (By Mr. Darby) Would you state your name, please?
A Robert Altmann.
Q By whom are you employed?
A By the Retired Persons Pharmacy.
Q Where is the Retired Persons Pharmacy located?
A 1224 24th Street, Northwest, Washington, D.C.
Q How long have you been affiliated with the pharmacy?
A Approximately 12 years.
Q What position do you have with the pharmacy?
A I am the manager of the Washington pharmacy.
Q How long have you held that position?
A Since January 1970.
Q What position did you hold with the pharmacy prior to January 1970?
A I was the assistant manager.
Q What kind of business is the Retired Persons Pharmacy?
A The Retired Persons Pharmacy is a mail order pharmacy for the members of the National Retired Teachers Association and the American Association of Retired Persons. These members send in prescriptions or orders to us to be filled, plus the prescriptions. We also have items called over-the-counter or patent medicines. These are price set through our building, filled by registered pharmacists, packed and mailed out to the members.
Q Has the pharmacy always been known as the Retired

Persons Pharmacy?

A No, sir.

Q What was its name before that?

A The NRTA-AARP Pharmacy.

Q What does that stand for again?

A National Retired Teachers Association and the American Association of Retired Persons.

Q When was the name officially changed?

A August 1972.

Q Approximately how many prescriptions does the pharmacy fill per year?

A The Washington pharmacy fills approximately 1,200,000 per year.

Q This is all done on a mail order basis; correct?

A Yes, except-- 99 percent of it is. We do have a small walk-in.

Q That's for people off the street?

A Members off the street can come in.

Q Members off the street can come in and purchase?

A Yes.

Q Where is that located?

A In the same building.

Q To the left or the right, when you come in?

A To the right.

Q What kind of employees do you have that work in the

pharmacy? What do they do? What kind of classifications, if any, do you have?

A We classify them by fourteen different classifications: people who open the mail, people who file our prescriptions, correspondence section, billing, the pricing department, the telephone room, the people who assist the pharmacists in picking the medication, the pharmacists, the girls who check the orders after they are filled, the over-the-counter section, the girls who add to the order items that don't require a prescription. Then we have a section that packs these items and puts themin the mail. Then we have a stockroom and we have a staff of people who supervise these operations. There are about fourteen different categories.

Q We have heard discussion here before, earlier today, concerning a conveyor bely system. Would you go into that a little bit more so that we can understand it?

A Right. It is a straight line system we have. Once the medicine and the prescription and th e order is given to the pharmacist, the pharmacist have benches on either side of these conveyor belts. The conveyor belt runs approximately two thirds of the plant. The pharmacists will get their work from a window where the assistants give them the medication. The prescription is written by a doctor. Secondly, it's the medication itself that would fill this prescription. Along comes with that the order that the person has, the invoice

already billed. These are given to the pharmacist in packs of 25. 25 prescriptions per box.

The pharmacist then takes the medicine and he still must decide himself which medicine he needs to fill the order. If he is missing an item he goes to the assistants and gets the medication. If he has the wrong, he will return it. So, assuming that everything works well, if he has 25 orders to fill, if he fills the orders and signs the prescriptions on the back that he has filled i[illegible] The marking is the number he has filled, the date he has filled it and his number that he is assigned by the company on the back of it. Then he must type the label, which gives the doctor's name, the patient's name, the name of the medication, the directions that the doctor called for, the date and whatever is required to fill a prescription.

Q How many prescriptions are put in some sort of a box on the conveyor belt?

A Then they are broken down into individual 25 units and they are put on the conveyor belt and they go down the line where our next section that it goes through, we have young ladies there who check these to make sure the prescription is filled correct, to make sure the number on the prescription is correct, to make sure that the medicine called for is correct, to make sure that the empty vial used to fill the prescription comes down the line. Then she in turn marks on

the back of the prescription that she has checked it.

Q Until eventually on the conveyor belt it goes down to a shipping or packing clerk?

A Then it goes to an over-the-counter section. The same belt where you put the items into it that call for patent items, brackets or any other items that normally don't require prescriptions. Then it goes down, makes the turn and comes back up to the shipping section where it is packed and mailed out.

Q Approximately employees do you have employed at the pharmacy?

A Approximately 230 employees.

Q How many of them are administrative people?

A Approximately 100.

Q How many are supervisory?

A We have two classes of supervisory. We have the staff supervisors, which are seven, and then we have 14 other supervisors.

Q And the remainder of the 220 of maybe 100 some odd employees--

A Yes, they are the ones who are actually down to help in supporting the pharmacists.

Q How many pharmacists are employed by the pharmacy?

A Now? I think there are about 34.

Q Does the number vary?

A Yes, it does.
Q Between what and what?
A I would say it varies between 30 to 34.
Q Could it be less than 30 at times as well?
A It could be less, yes, but rarely.
Q Do you have any supervisory pharmacists?
A Yes, I do.
Q How many supervisory pharmacists?
A I have 7.
Q What are the names of the supervisory people?
A Mr. Brualt, Mr. Alvin Miller, Mr. Hy Norman, Charlie Nix, Nathan Zilber and Melvin Baron.
Q Did you say Mr. Eisman?
A I am sorry. Mr. Eisman.
Q I would like to direct your attention to the fall of 1971. Was there a proceeding conducted before the National Labor Relations Board which involved the pharmacy?
A Yes. We had an election to decide whether pharmacists wanted or did not want a bargaining unit representing them.
Q Did the pharmacists submit to the National Labor Relations Board a listing containing the names and addresses of the pharmacists who were eligible to vote in the election?
A Yes, sir.

MR. DARBY: I would like this marked as Respondent's Exhibit No. 4.

(The above document was marked Respondent's Exhibit No. 4 for identification.)

Q (By Mr. Darby) Mr. Altmann, I show you what is marked as Respondent's Exhibit No. 4 for identification. Could you tell us what this three-page document represents?

A It represents a list of the pharmacists that were employed by the pharmacy, I imagine, on September 17th.

Q Did you send this letter to the Labor Board?

A I did; yes, sir.

Q How many pharmacists were employed as of the date of that letter?

A 34, I believe.

MR. DARBY: I would like to offer this.

JUDGE BOTT: Any objections?

MR. HOPSON: May I voir dire this document?

JUDGE BOTT: Any of these documents are subject to check. If your files show you that there is any discrepancy, you can find it out tonight or later on. It's the excelsior list, obviously. You ought to have it. He wouldn't know what it was. He gave the payroll to his lawyer and he gave it to the Labor Board.

MR. HOPSON: Your Honor, I don't see any relevance of it. It contains names of people that are supervisors within the meaning of the Act. I don't think it is competent to show what the employee complement of the unit was on the date

indicated.

JUDGE BOTT: Let me ask counsel, is that the list that you submitted to the Board for the election?

MR. DARBY: This is the excelsior list.

JUDGE BOTT: Are they so designated as supervisors?

MR. DARBY: Prior to the election they were not known to be supervisory people, I believe.

MR. LECHMAN: Your Honor, I have to object to that. The witness has just testified that they have supervisors. There was a pre-election dispute between the Union and the Company as to the supervisory status of four employees. The Guild maintains they were supervisors. The Company maintains they were not supervisors. The four were challenged. They were listed on the excelsior list. After the elections, those four suddenly became supervisors when it came time to negotiate an agreement and Mr. Altmann has just testified they were supervisors.

MR. DARB Y: I am not contesting thefact that they are supervisory people. These names were included on the excelsior list.

JUDGE BOTT: He has listed them so we will know who they are and the rest are non-supervisors.

MR. HOPSON: I wonder if we can get a stipulation that the seven supervisory pharmacists are supervisors.

MR. DARBY: I will stipulate that the seven names that

were indicated before by Mr. Altmann are supervisory pharmacists.

JUDGE BOTT: That stipulation is noted.

MR. HOPSON: Then I have no objection.

JUDGE BOTT: I will ask counsel, I assume you are putting this list of employees in, which is over a year old, to show some connection with the situation on April 19, 1973?

MR. DARBY: That is correct, sir, but I assume I had to start somewhere.

JUDGE BOTT: Respondent's 4 is admitted into evidence.

(The document, heretofore marked Respondent's Exhibit No. 4 for identification, was received in evidence.)

Q (By Mr. Darby) Do you know if an election was conducted by the National Labor Relations Board?

A Yes, sir.

Q Did you ever see a copy of what has been marked as General Counsel's Exhibit 5?

A Yes, I have.

Q What does it indicate as far as the date of the election?

A November 18, 1971.

Q And the result, I believe, is in evidence already. Following the election, did the parties enter into negotiations for a collective bargaining agreement?

A Yes, sir.
Q Did you attend the negotiations?
A Yes, sir.
Q Did counsel attend negotiations?
A Yes, sir.
Q As counsel, who did you have attending negotiations?
A Mr. Robert Lewis.
Q Did anyone else attend with him?
A Yes. Ms. Peggy Dutchen.
Q In addition to yourself from the company, was anyone else in attendance?
A Mr. Paul Brualt.
Q What was his position?
A He was my assistant and as advisory
Q Do you know whether the contract was eventually resolved between the parties?
A Yes, sir.
Q During the year in which the contract was in effect, was there any change in the personnel of the employees that were listed on what is now in evidence as Respondent's Exhibit No. 4?
A Melvin Baron was moved from the line pharmacist to staff.
JUDGE BOTT: What do you mean by "staff"?
THE WITNESS: Supervisory, sir.
MR. DARBY: He was one of the names we have stipulated

to be supervisory?

JUDGE BOTT: All right.

THE WITNESS: George Bouchard was terminated. Paula Campbell left of her own accord. George Davis was terminated. Harry Eisenberg, deceased. Dianne Coffman left, resigned. Mr. Charlie Nix was promoted to assistant buyer.

JUDGE BOTT: Out of the unit?

THE WITNESS: Out of the unit, yes.

Q (By Mr Darby) Is that it?

A That's it, I think; right.

Q Since the date of the election you now have had some turnover for personnel. Did you in addition hire any new employees?

A Yes, sir.

Q Did you request anyone at the pharmacy to make up a listing of the new pharmacists who were hired?

A I asked my personnel officer to make up such a list.

Q What is the name of the personnel officer?

A Ms. Barbara Mickens.

Q Did she submit a list to you?

A Yes, she did.

MR. DARBY: I would like this marked as Respondent's Exhibit No. 5 for identification.

(The above document was marked Respondent's Exhibit No. 5 for identification.)

Q (By Mr. Darby) Is this a copy or is this the list that was submitted to you?

A This is the list that was submitted to me, right.

Q Were all the pharmacists from this exhibit continuously employed from the date of hire or have some of them also left?

A Some have left us.

Q Would you explain what the columns mean?

A The first column, PT, means they were part time employees. FT means they went on full time that date, the second column.

Q What does the last column indicate?

A The last column indicates their position, whether they were permanent laid off, whether they volumtarily quit, or whether they were terminated.

Q And the dates there for whatever happened?

A Yes, sir.

Q Is it safe then to assume that if there is no indication in the last column as to the employee's being permanently laid off or having voluntarily quit or terminated, that this employee is still employed by the pharmacy?

A It's a possibility; right. We have one here who is--

Q Unless somebody was brought back for any reason?

A That's right.

MR. DARBY: I would like that offered as Respondents Exhibit No. 5.

I think I might be able to facilitate matters by offering the next exhibit and I will hold offering Respondent Exhibit No. 5. I would like to have this marked as Respondent's No. 6 for identification.

JUDGE BOTT: Yes. Mark them.

(The above document was marked Respondent's Exhibit No. 6 for identification.)

Q (By Mr. Darby) Mr. Altmann, let me just show you Respondent's No. 5 again. The last column indicates a PL. What does that stand for?

A PL means permanent laid off.

Q What does that mean?

A That meant that the employee who was permanently laid off was given his sick leave, any unused vacation, plus severance pay, with the thought that rehiring-- they would not be rehired at any time.

Q Were there any of the people listed here who were pharmacy people, supervisory people, on Respondent's Exhibit No. 5?

A None.

Q After you permanently laid off the pharmacists indicated as permanently laid off, did you rehire any of those pharmacists as work was needed?

A Ms. Ogwa came back and she is on a part time basis at the present time.

Q On the date of the layoff, as it indicates there March 30, 1973, did you lay off a pharmacist, lay off employees in other classifications within thepharmacy?

A Right; about 19 other employees.

Q I show you what has been marked as Respondent's Exhibit No. 6. What does that indicate?

A This is a list of all of the employees, including pharmacists, that were laid off on 3-30-73.

Q Which will also contain the names of pharmacists; correct?

A Right.

Q Some of these people were rehired; is that correct?

A That is correct.

Q Which would also be some of the pharmacists from Respondent's Exhibit No. 5. If you read it in conjunction with Exhibit No. 6, it would indicate any pharmacists who were rehired; correct?

A Right.

MR. DARBY: Now I offer both into evidence.

Counsel for the Gener[illegible] Counsel has indicated to me that on Respondent's Exhibit No. 5, next to the name of Benjamin Feldstein, a voluntary quit of 8-18-73 is indicated. It should be 8-18-72.

JUDGE BOTT: All right.

MR. HOPSON: We have no objection.

JUDGE BOTT: There being no objection, Respondent's 5 and 6 are admitted into evidence.

(The documents, heretofore marked Respondent's Exhibits 5 and 6 were received in evidence.)

Q (By Mr. Darby) Mr. Altmann, during the year in which the contract was in effect, did you ever have conversations with any of the pharmacists that were employed by the pharmacy?

A Yes, I have.

Q Would you tell us what kind of conversations you have had with the pharmacy?

A I have had many talks with the pharmacists on their insurance, about many problems they may have, just on an individual basis. I have had luncheons with them on many occasions.

Q Have you ever discussed,with any of the pharmacists employed by the pharmacy,the Guild?

A Yes, I have.

Q Would you relate for us what you said?

MR. HOPSON: Objection, Your Honor.

JUDGE BOTT: Why?

MR. HOPSON: I would like to object as to particularity: time, place and who.

JUDGE BOTT: Correct. It would be necessary for the witness to give us at least the name of the person he talked

to and then fix the date.

MR. DARBY: That's what I was going to do.

Q (By Mr. Darby) Do you recall any of the names of the pharmacists you spoke with concerning the Guild?

A Yes.

Q What is their name?

A I talked to Mr. Avella about it.

Q Do you recall when you spoke to Mr. Avella about this?

A No. The time and date: no, but I can give you the occasion when it happened. The occasion was at the time when Mr. Avella was having trouble with his wife's insurance. He came to see me about that. He was telling me that he just couldn't understand what the Guild wanted, why the employees wanted to join it. He told me about the Hospitalization program. They had it extremely well, as far as he knew. The Guild has done nothing for them, couldn't do nothing for them, and in fact the Guild had possibly lost them money because if they had not had a Guild I would have probably given them an additional raise instead of what the Guild negotiated for.

Q Is that what he said to you?

A Right.

Q Did you have conversations--

MR. HOPSON: Your Honor, let me at this point enter an objection to the preceding hearsay testimony. I move it be

struck and I wonder if I could have a continuing objection to such testimony.

JUDGE BOTT: You may have a continuing objection, but your motion is denied. Your motion to strike is denied.

MR. LECHNER: Could I pose an objection on this, unless the witness is able to particularize it to some degree. The answer that Mr. Avella's wife had trouble with the insurance doesn't tell us whether it was in 1970 or before, during the organizational drive or since then. We have no particularity and it is impossible for us to cross-examine him in any fashion to elicit any countervailing testimony.

JUDGE BOTT: The lack of definition and precision will go to the weight that I will give to the testimony.

Q (By Mr. Darby) Mr. Altmann, do you have any idea as to when the approximate time in which this conversation took place?

A I would say it was probably in the late fall of '72.

Q Did you have a conversation with any other pharmacist concerning the Guild?

A I had a call from Mr. Paul Johnson.

Q Do you recall when you had the conversation with Mr. Johnson?

A I think I had two talks with Mr. Johnson. The first one was before the election, before November 1971, when at that time he showed--

MR. HOPSON: Objection, Your Honor. I don't believe any relevance can be shown to any conversation before the election.

JUDGE BOTT: I agree. I won't take that testimony.

MR. DARBY: Mr. Bott, I think the testimony may be relevant as to the background, concerning the type of person that Mr. Johnson is.

JUDGE BOTT: You mean, he was non-union before the election and he still is? Where does it get you. He became union when the Board certified the union. The union was the majority representative. We know that there are 10 people, who voted No. But the union became the statutory representative. We know the cases. I am sure you have had much more time to study them in the last four months.

Q (By Mr. Darby) Did you have a conversation with Mr. Johnson subsequent to the date?

A Yes, I had.

Q Do you recall that conversation?

A That would probably haveto be the first part of this year when he made some recommendations that he had, that he thought I should put in effect in the pharmacy. I discussed with him the idea that the recommendations were fine. I would probably have to discuss them with Paul. I'd have to maybe discuss them with the Guild to find out whether these recommendations could be put into effect. He comment was, I should spend more time trying to get rid of the Guild than

trying to pacify the Guild. I let it go at that.

On another occasion, and I think I can pinpoint the date of this one pretty well, March 30th or April 1st, that weekend, Ms. Ernie Turner called my house and spoke to my wife.

MR. LECHNER: What year are we talking about?

THE WITNESS: '73. She mentioned to my wife that she had something important she wanted to tell me and could my wife try to get hold of me so that she could talk to me. That weekend I could not get hold of Ernie Turner. I don't think I tried to,-to tell the truth. I came in Monday morning and talked to Mr. Brualt and asked Mr. Brualt to investigate it for me to find out what Ms. Turner wanted. Apparently Mr. Brualt could not get the information out of Ms. Turner. Mr. Brualt came back and informed me of the situation. On Monday Ms. Turner came to my office in the coffee break time in the morning. She had with her a list of numbers, two columns. Each number we went through represents the number of the pharmacist. Each pharmacist had a number.

Q This is for identification?

A An identification number. The number is used for their prescription identification when they are filling it. She had two lists. We went through the numbers and matched the names to the numbers. This list came out 14 against.

MR LECHNER: Objection, Your Honor. The conclusion of the witness has to be struck. If the witness wishes to

relate the conversation in detail as to who said what--

JUDGE BOTT: It is very unclear. I will strike from the point where "she gave me a list of numbers and each pharmacist has a number and they checked the number against the names and they found out who the people were. Now we have a list of names. From there on in, it has to be a little more accurate than the general conclusion that there were 14 here or 14 there.

Q (By Mr. Darby) Did Ms. Turner explain to you what the two columns of numbers indicated?

A Right.

Q What did she say?

A She said the numbers on one side of the list represented the pharmacists she believes were members of the Guild and on the other side, the pharmacists she believed were not in favor of the Guild.

Q Did you ask her to make up such a list?

A I did not.

Q Is Ms. Turner a non-supervisory pharmacist?

A Yes, she is.

Q Did she give you a copy of the list?

A She did not, nor did I ask for one.

Q Did you have a conversation with any other pharmacists in the period in which the contract was in effect?

A I may have, but I can't be precise on it. I must have

along the line. I can't remember offhand.

Q Did you have a conversation with a Mr. Levy?

MR. HOPSON: Objection. Leading the witness.

JUDGE BOTT: I think the witness said he couldn't remember. That's proper. Objection overruled.

THE WITNESS: With Mr. Levy, right.

Q (By Mr. Darby) Do you recall when the conversation with Mr. Levy occurred?

A Right. I took Mr. Levy out to dinner as appreciation for extra production that he had on one day. We had dinner. We talked. As we talked, naturally we got around to talking about the Guild. Mr. Levy informed me that he did not need the Guild to represent him. In fact, he needed no one. He was well able to handle himself, to make his own bargaining, to make his own way, and he did not want anybody telling him what he could do or could not do. He was mainly concerned to come to work. He wanted to work the hours that he could. He wanted all the production and work he could get and he saw no need to be interfering with his work by other employees, members of the Guild or other employees, asking him to join the Guild. He saw no need for it.

Q Was there a problem with Mr. Levy's production in regard to certain pharmacists who may or may not have been Guild members?

A A problem?

Q Was there a discussion by some of the other pharmacists concerning Mr. Levy's production?

A There was a lot of discussion that Mr. Levy was working too hard. Mr. Levy mentioned that.

MR. HOPSON: Objection.

MR. LECHNER: Objection, Your Honor. The witness is relating total hearsay. He has not identified time, place or person.

JUDGE BOTT: Objection sustained.

I am sorry to interrupt. I don't want to get you off the track, but did he fix the date approximately with Levy?

MR. DARBY: If he didn't, I will ask him.

Q (By Mr. Darby) Do you recall when that conversation with Mr. Levy occurred? You indicated that you had gone out for lunch or dinner, I believe, concerning production.

A That would have to be between the signing of the contract and the date that Mr. McHugh came aboard.

Q Which was on—

A There would be some place in October.

Q Have you ever had any conversations with any supervisory employees concerning the Guild?

A Yes, I have.

Q With whom?

A Mr. Brualt.

Q Do you recall when the conversation with Mr. Brualt

occurred?

A This was daily with Mr. Brualt, almost daily. Mr. Brualt and I had many meetings from the day of the elections, from the negotiations up to the date of the signing of the contract for the whole life of the contract.

Q You had conversations. Did you have any meetings with Mr. Brualt?

A Right.

Q But did you ever have any conversations with him concerning the Guild?

A Yes, many times.

Q Would that be over the period of time in which the contract was in effect?

A Yes.

Q Did you have a conversation with Mr. Brualt prior to April 19th of this year?

A Yes, sir.

Q Did you have conversations with Mr. Brualt subsequent to September 1, 1972, last year?

A Yes, I had.

Q Would you tell us to the best of your recollection what the conversations with Mr. Brualt dealt with?

MR. HOPSON: Objection.

MR. LECHNER: Objection.

MR. HOPSON: That is hearsay. Mr. Brualt is here. He can

testify to it.

JUDGE BOTT: This goes to the question of the good faith of the company?

MR. HOPSON: Right. Mr. Brualt is present. He can certainly testify. Whatever he has to say would be clearly the best evidence. I don't see any need to get it by way of hearsay.

JUDGE BOTT: The Respondent's mental processes are in issue in this case. The basic issue is whether or not they questioned the Union's majority status on the basis of objective facts. This is their testimony. You may not think it is very strong testimony, but it may turn out to be strong. He can testify about what people told him that made him question the Union's majority, if he did.

MR. HOPSON: But the best evidence of what was in his mind is what Mr. Brualt in fact said and that is the best witness for that, Mr. Brualt.

JUDGE BOTT: The best evidence of what is in his mind is what he tells us is in his mind. It may not be credible evidence, but it's the best.

MR. LECHNER: Your Honor, may I pose another objection.

JUDGE BOTT: I would like to hear a good one.

MR. LECHNER: More to the particularity of the question. I don't think that what is at issue in this case is what Mr. Brualt and Mr. Altmann talked about the Guild, which is

the way the question was phrased, but rather as you posed it, as to whether the Union or the Guild had a continuing majority. I don't think you or I would want to sit here and listen to every conversation they had about the Guild.

JUDGE BOTT: I thought this was preliminary to getting to what actually was said with respect to the issue that we are all vitally concerned with.

MR. DARBY: It is, Your Honor.

MR. LECHNER: If that was the question, I didn't hear it as the question.

JUDGE BOTT: The objections are overruled. YOu are getting to conversations with Brualt and we want the best date we can get and we want the context and whereand how and so on.

Q (By Mr. Darby) Would you relate for us the conversations which you had with Mr. Brualt, to the best of your recollection concerning the Guild?

A Yes. Mr. Brualt had told me that he had spoken to many of the pharmacists on the floor of the pharmacy, that they were unhappy with the Guild. He mentioned Mr. Wolf to me. He mentioned Mr. Goldman. He also mentioned that they were having trouble with little Kim, that she was being constantly harrassed to join the Guild. She was being harrassed that if she did not join the Guild there was no way she was going to hold her job. I had to massure Mr. Brualt. Mr. Brualt had

to go back and reassure the young lady that this was true. I had to get a hold of Kim. I tried to talk to her several times. She was apparently very frightened, very concerned. She asked if there was anything I could do to make sure that she could just do her work and not be harrassed.

Q Did Mr. Brualt indicate the names of any other pharmacists in his discussions with you?

A Many times. Mr. Brualt did make up a list. Mr. Brualt confirmed the list. He would give me some idea what from his observations, his opinions, from his discussions with the employees, that these were the people he figured were for the Guild and these people were against the Guild. It was fairly easy to pick out the people who were--

Q What names did he mention to you?

MR. LECHNER: Objection, Your Honor. I would like to hear the rest of the witness' answer.

JUDGE BOTT: It was fairly easy to pick out the people who what?

THE WITNESS: Who were possibly in favor of the company.

Q (By Mr. Darby) Did these conversations with Brualt or that you had individually with the pharmacists begin to indicate anything to you?

A Yes, it did.

Q What?

A It indicated the Guild did not enjoy the full support of

the pharmacists, nor did they have the majority support of the pharmacists.

Q Did your contract have a requirement that all pharmacists had to be union members?

A It did not; no, sir.

Q What kind of provision did it have?

A A maintenance of membership.

Q Which means what?

MR. HOPSON: Objection. It is in the contract.

JUDGE BOTT: I understand what a maintenance of membership is. The contract is in evidence.

Q (By Mr. Darby) Was there any other reason, in addition to your individual conversations with the pharmacists and the conversations with Mr. Brualt, warranting your conclusion?

A Yes. The contract had certain rights that the Guild had, which was the right of visitation so that they could come and see where the pharmacists worked, the working conditions, how they worked. This was exercised only once, to my knowledge, and that was done through Mr. Brualt. That was right after the contract was signed.

Q Which would have been when: September?

A It had to be September.

Q 1972?

A It had to have been in the first part of September. No one knew whether the Guild has a shop steward. No one has

ever informed me. I have only had two meetings with the Guild.

Q When were they?

A They were last year. The first one was a meeting with the ethics committee, which lasted possibly 15 minutes. The second meeting was the grievance committee, which lasted probably five or ten minutes. In every case they put their recommendations in writing. I told them that Mr. Brualt and I, or Mr. Zilber the other time, would consider them. We had luncheon with the pharmacists and reported back to what we could do or not do on those ideas or suggestions that they had outlined. I saw no evidence of the Guild, no support of the Guild-at all, to my knowledge. No one ever told me who was a member of the Guild. No one ever said.

Q When you terminated some of these pharmacists that you indicated earlier, did you ever hear from anyone complaining about the terminations?

A Not a word.

Q When you laid off the pharmacists, did anyone come to you and speak to you in regard to laying off the pharmacists?

A No official member that I knew of in the Guild ever came to me.

Q Did you ever know that the pharmacists were holding what they considered possibly to be Guild meetings during coffee time in the pharmacy?

A Not to my knowledge, no.

Q Did you ever see a notification being passed around to the pharmacists on a meeting being scheduled?

A No, sir.

Q Did you discuss this feeling with anyone about the fact that you felt that they didn't represent or have the support of the pharmacists any more?

A I discussed it with Mr. Brualt and I discussed it with Mr. McHugh.

Q Do you recall ever discussing it with counsel?

A Yes.

Q When did you discuss it with counsel?

A I am quite sure it was brought up in the meeting at Mr. McHugh's office on February 27th of this year.

Q Did you raise it?

A Yes.

Q Who was present at that meeting?

A Mr. McHugh, Mr. Jackson, Mr. Darby and myself.

Q Where was that meeting held?

A In Mr. McHugh's office.

Q Did the meeting commence in Mr. McHugh's office?

A It did not.

Q Was there a prior meeting?

A There was a prior meeting in my office at 9 o'clock in the morning.

Q Who was at your office at 9 a.m.?

A There was Mr. Jackson, Mr. Darby.

Q Do you know the purpose of the meeting on the 27th?

A Yes, I do.

Q What was the purpose of the meeting?

A It was twofold. First, a part of the meeting was to acquaint Mr. Jackson with Mr. McHugh who just came aboard as national manager. Mr. Jackson knew Mr. Browning who was national manager before. Mr. Jackson wanted my interpretation of Mr. McHugh, plus the fact that it would soon be March 1st. There was some consideration to be given about the contract. I wanted Mr. Jackson to explain or at least give some interpretation to Mr. McHugh on the contract since the time was coming.

Q Did Mr. Jackson indicate to you as to what the March 1st date meant?

A It meant that we had to make some plans for renegotiation of the contract.

Q Did Mr. Jackson discuss with you at that meeting any of theclauses that might have to be change d in the renegotiating of the new agreement?

A He mentioned the fact that we may have to change the contract for the maternity leave to comply with new laws.

Q Was there any discussion of any other aspect of the agreement at that meeting in February, any other contractural

part of the contract?

A We were quite sure. There must have been other grievances that had to be changed. Wages and hours; many things may have to be changed.

Q Was there any discussion concerning any changing of the hours?

A In my office? No.

Q In your office with Mr. Jackson and myself, was there any discussion concerning any proceeding that was pending with the pharmacy for another governmental agency?

A Yes. We had discussions about Equal Opportunity Employment. I explained to Mr. Jackson what we had done. I told him what other concepts we were working on and he asked me to keep him informed and I said I certainly would. To keep up the handbook and keep it straight. Many things we talked about then.

Q By the way, what happened to the other governmental matter?

A We had found that we were not in violation.

Q You also had an employee handbook; is that right?

A Yes.

Q What, if anything, had to be done to the employee handbook?

A Bring it up to date.

Q In accordance with what?

A I don't think he told me what it was in accordance with. He said, "Bring it up to date", as he was walking out the door. You know Mr. Jackson.

Q After that meeting in your office, did Mr. Jackson, myself and you go any place else?

A Yes. We went to Mr. McHugh's office.

Q What, if anything, was discussed at Mr. McHugh's office?

A The meeting started out, I would imagine, Mr. Jackson sizing up Mr. McHugh and Mr. McHugh sizing up Mr. Jackson. Mr. McHugh was concerned whether he wants this person as his counsel. Mr. Jackson wanted to know whether he was going to still be counsel. Many things. I think they were just trying to figure each other out, which they did and which most of the time they spent.

Q Was there any discussion concerning the renegotiation of the agreement at Mr. McHugh's office?

A Right.

Q What was discussed?

A Many things. That was between Mr. McHugh and Mr. Jackson. They knew the legal points they wanted to bring up and they brought it up amongst themselves.

Q Did you indicate anything to Mr. Jackson?

A Yes. I explained to Mr. McHugh and Mr. Jackson the information that I had received from Paul, his feelings, my feelings, the whole feelings of the plant.

Q Which was what?

A That the Guild did not represent a majority of our pharmacists.

JUDGE BOTT: At this time we will take a recess.

(Whereupon, a short recess was taken.)

JUDGE BOTT: Back on the record.

We are going to break when direct examination is completed.

Q (By Mr. Darby) Mr. Altmann, following the February 27th meeting with Mr. Jackson, myself, yourself and Mr. McHugh, were you ever advised that the Guild desired to reopen the contract?

A Yes, I was advised of that, on a letter of March 7th.

Q Whose letter of March 7th?

A Mr. Lechner's letter to Mr. Lewis.

Q Did you ever receive a copy of that letter yourself?

A Yes, I did.

MR. DARBY: I would like to have this marked as Respondent's Exhibit No. 7. It is a two-page exhibit.

(The above document was marked Respondent's Exhibit No. 7 for identification.)

Q (By Mr. Darby) How did you receive a copy of Mr. Lechner's letter dated March 7th?

A From Mr. Lewis, with a covering letter.

Q I show you what has been marked as Respondent's Exhibit

No. 7 and ask you if you have ever seen that before.

A Yes, I have.

Q What is that? What does the exhibit represent? The first page of it represents what?

A This is a letter from Mr Lechner, that he would like to have a luncheon discussion with Mr. Lewis, confirming that he would have a luncheon discussion with him on the contract.

MR. DARBY: I would like to offer this as Respondent's Exhibit No. 7.

JUDGE BOTT: Any objections?

MR. HOPSON: No objection.

JUDGE BOTT: It is admitted.

(The document, heretofore marked Respondent's Exhibit No. 7 for identification, were received in evidence.)

Q (By Mr. Darby) Do you know whether Mr. Lewis and Mr. Lechner ever met?

A Yes. They met on April 19th.

Q Do you know if that meeting was supposed to be on another date?

A It was supposed to be, I believe, on the 20th. I think you called me and asked me was it possible to have that changed, not the lunch, but the meeting that you-- that Mr. Lewis was going to have with Mr. Lechner; could I make it on the 19th; would Mr. McHugh be available. I told him fine and

unless anything happened, we would be available and if not, I would call him back.

Q So you met with Mr. Lewis on the morning of the 19th; is that correct?

A Yes, sir.

Q And he was to meet with Mr. Lechner on the afternoon of the 19th; is that correct?

A Right.

Q Where did you meet with Mr. Lewis?

A In my office.

Q Was anyone else present in your office?

A Yes. Ms. Peggy Braden was present and Mr. McHugh was present.

Q Did anyone come in to that meeting, near the end of that meeting?

A Mr. Brualt came in.

Q Why was Mr. Brualt called in to the meeting? Do you know why?

A To reconfirm my belief that the Guild did not have the support of the majority of the pharmacists and also to convey his feeling as well as mine to Mr. Lewis and Ms. Peggy Braden.

Q Did you indicate to Mr. Lewis what you felt or what you would like to have had at that period of time?

A I certainly did. I felt that all I wanted was to have an election so the employees could decide what they wanted

and to find out whether Mr. Brualt and I felt was true or not true. I asked Mr. Lewis, how can we get this resolved; what can we do to have the employees decide whether I am right or wrong.

Q Did Mr. Lewis say that we could file a petition for an election?

A He certainly did, but it was discussed with Mr. John McHugh before that decision was made.

Q Do you know if Mr. Brualt showed anything to Mr. Lewis or Ms. Braden or yourself at that meeting on the 19th of April?

A Right. He had a list, a three-column list, of the pharmacists he believes sincerely were against the Guild or not supporting the Guild, the ones that he believed supported the Guild and some maybe's in between.

Q Did he ever show you a list like that before?

A Many lists were made up. We would compare many lists; right.

Q Do you know if Mr. Lewis met with Mr. Altmann-- with Mr. Lechner on the 19th?

A Yes, he did.

Q Were you advised as to the outcome of that meeting?

A Yes, I was.

Q What did Mr. Lewis say to you or Ms. Braden say to you?

A After lunch, Mr. Lewis came back with Ms. Braden in my

office. They stated that they had told Mr. Lechner what he wanted. Ms. Braden implied at the time that it looked like he was willing to have an election. He said, "Well, this is going to be nice..."

MR. HOPSON: I object to what he said happened, what she said happened at the meeting.

JUDGE BOTT: Objection sustained.

Q (By Mr. Darby) Did Ms. Braden ask you to reconsider the determination as to filing a petition for any reason?

A Yes. She mentioned first that Mr. Lechner had threatened, if we did not--

MR. LECHNER: Objection to the word "threatened", and to the whole conversation.

JUDGE BOTT: With respect to the sensitivities of counsel, I'll take that as a promise rather than a threat.

MR. HOPSON: I would also object, Your Honor, on the basis that this is still plain and simple hearsay.

JUDGE BOTT: The question we are getting to is, what is the final decision, I guess. Your witness testified that he did ask for them to take it back to their principals for reconsideration. This is the testimony that they did.

Ms. Braden asked you to reconsider; is that correct?

THE WITNESS: Right.

Q (By Mr. Darby) On what basis did she ask you to reconsider?

A That did I realize that Mr. Lechner had promised to bring in the Communications Workers to organize the supporting help of the pharmacists.

Q Prior to making the final decision to file the petition, did you consult with anyone else and relay this message to consult for the final determination to file the petition?

A I talked to Mr. McHugh, advised him of the situation, told him what information we had from Ms. Braden, from Mr. Lewis; and if he was still in agreement with me, that I would tell Mr. Lewis to goahead. We still felt that the only fair way to resolve the problem was to have an election.

Q Did you relate that to Mr. Lewis at that point of time?

A Yes.

Q It was decided at that period of time to file a petition?

A Right.

Q Did you ever advise the pharmacists about the petition which was filed?

A I did.

Q When?

A It must have been the next hour or half hour. I called the pharmacists in my office and read a statement to them.

MR. DARBY: I would like to have this marked as Respondent's Exhibit 8.

(The above document was marked Respondent's Exhibit No. 8 for identification.)

Q (By Mr. Darby) Mr. Altmann, I show you what has been marked as Respondent's Exhibit No. 8 for identification and I ask you to tell us what that is?

A That is a statement I read to the pharmacists telling them what our attorney and the discussion we had and what we felt we would like to file a petition for in an election.

MR. DARBY: I offer this into evidence.

JUDGE BOTT: Any objections?

MR. HOPSON: Just one small question. Is there some writing on the right side of this? Handwriting.

MR. DARBY: This says "April 19, 1973, read"?

THE WITNESS: Read to pharmacists.

Q (By Mr. Darby) Is that in your handwriting?

A Yes, sir.

MR. HOPSON: No objection.

JUDGE BOTT: Admitted.

(The document, heretofore marked Respondent's Exhibit No. 8 for identification, was received in evidence.)

Q (By Mr. Darby) Mr. Altmann, did you request anyone in the pharmacy to ascertain from your employee records the number of non-supervisory pharmacists who were employed on April 19, 1973?

A Yes, I did.

Q Who did you ask for that?

A I asked Barbara Mickens, my personnel officer.

Q Did she submit such a listing to you?

A She did.

MR. DARBY: I would like this marked as Respondent's Exhibit No. 9.

(The above document was marked Respondent's Exhibit No. 9 for identification.)

Q (By Mr. Darby) Mr. Altmann, I show you Respondent's Exhibit No. 9 and ask you if this was the list that was submitted to you by the personnel officer?

A Yes, it is.

Q How many employees are indicated as non-supervisory pharmacists listed on that list as being employed on April 19, 1973?

A 28.

MR. DARBY: I offer that into evidence, sir.

MR. HOPSON: No objection.

JUDGE BOTT: Respondent's Exhibit 9 is admitted.

(The document, heretofore marked Respondent's Exhibit No. 9 for identification, was received in evidence.)

Q (By Mr. Darby) Mr. Altmann, you indicated or there has been testimony as to the change in hours of the pharmacists; is that correct?

A Right.

Q Did you at any time reach a decision to change the hours of non-pharmacy personnel who were employed by the pharmacy?

A Yes, we did. The actual date of the decision, I can't say, but it had to be some time in the early part of May when Mr. McHugh and I made the final decision.

Q Why were you considering the change in the hours for non-pharmacy employees?

MR. HOPSON: Objection, Your Honor. I think the objection was earlier made.

JUDGE BOTT: I think it's the same question we had before. It's really immaterial what basis the company had for changing the hours. They still had the duty to bargain with the union, if the union were the statutory representative. That's the law. The best reasoning in the world--

MR. DARBY: Let me approach it from a different way.

Q (By Mr. Darby) Were the hours ever changed for the non-supervisory pharmacists-- Were the hours ever changed for the personnel in the pharmacy who are not pharmacists?

A Yes, they were.

Q What date did that change go into effect?

A The 29th of May.

Q On the 29th of May, did you have a discussion with anyone concerning what the hours were for the pharmacists? On the 29th of May, what were the hours of the non-pharmacist

employees?

MR. LECHNER: Objection, Your Honor, to relevancy.

JUDGE BOTT: I will sustain the objection. Could you make an offer of proof?

MR. DARBY: All right. Your Honor, I am trying to get through this witness' testimony, and his testimony would so indicate, that the majority of the employees who worked in that pharmacy are non-pharmacists and that it was discussed among the supervisory people of the pharmacy-- meaning Mr. Brualt, Mr. McHugh and Mr. Altmann, as well as with counsel, including myself-- that in order to conform to the area practice within Washington, in order to conform with the hours worked by employees in the other four pharmacies throughout the country, they were desirous of reducing the hours for the entire employee complement. In this pharmacy, at the Washington location, it would be from 42 and a half hours a week to 40 hours a week.

There were various reasons involved, such as the permitting the employees to go home early, since the majority of them were females. They wanted to include this as a new benefit program. It was eventually decided, during the month of May, that on the 29th of May the non-pharmacists who were employed by the pharmacy would have their hours changed from 42 and a half hours per week to 40 hours per week.

This pharmacy is run on an assembly-type of system. It

was decided after the hours were changed for the majority of the employees that they now had the pharmacists working on a half hour extra, which meant that they were producing things that weren't getting out.

JUDGE BOTT: Are you saying that is a good, economic, businesslike decision?

MR. DARBY: Yes.

JUDGE BOTT: But it is still a violation of the law.

MR. DARBY: I would like to carry it one step further, to the date on which the decision went into effect for the pharmacists.

JUDGE BOTT: I think it is irrelevant. What do you think will happen to General Motors if they did that to the tool and die makers, because they had just changed the hours for the production and maintenance employees.

Q (By Mr. Darby) Mr. Altmann, when these hours changed for the pharmacists, when was that?

A On May 30th.

Q When did the contract expire?

A May 29th.

Q Did you advise the pharmacists of the change in their hours?

A I advised them the morning of May 30th.

Q How did you advise them?

A I advised Mr. Eisman to get the pharmacists together.

I had a message I wanted to give to them and I read a prepared statement to them.

MR. DARBY: I would like this marked as Respondent's Exhibit No. 10 for identification.

(The above document was marked Respondent's Exhibit No. 10 for identification.)

Q (By Mr. Darby) I show you what has been marked as Respondent's Exhibit No. 10 for identification and ask you what it is?

A This is a statement I read to the pharmacists concerning their hours on May 30th.

Q Which was read to them on the morning of May 30th?

A Right.

MR. DARBY: I would like to offer this into evidence.

MR. HOPSON: Your Honor, I would like to voir dire.

JUDGE BOTT: This will be a good time to break. You can do that in the morning. We will adjourn until 9:30.

(Whereupon, at 4:30 p.m., the hearing in the above-entitled matter adjourned, to reconvene at 9:30 a.m., Wednesday, August 15, 1973.)

ONTR

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Region 5

| | | |
|---|---|---|
| In the Matter of: | | |
| RETIRED PERSONS PHARMACY, t/a NRTA-AARP PHARMACY, | | |
| | Respondent, | Case No. |
| and | | |
| | | 5-CB-6108 |
| METROPOLITAN GUILD OF PHARMACISTS, | | |
| | Charging Party. | |

Hearing Room 500
Postal Rate Commission
2000 L Street, N. W.
Washington, D. C.

Wednesday, August 15, 1973

The Above-entitled matter came on for further hearing, pursuant to adjournment, at 9:30 a.m.

BEFORE:

The Hon. GEORGE J. BOTT, Administrative Law Judge.

APPEARANCES:

(The same as heretofore noted.)

# C O N T E N T S


| WITNESSES: | DIRECT | CROSS | REDIRECT | RECROSS |
|---|---|---|---|---|
| Robert C. Altmann (resumed) | 162 | 166 | | |
| Paul R. Brault | 179 | | | |
| Robert Giovannetti | 201 | | | |
| G. Harrison Darby | 210 | | | |
| Peggy Lee Braden | 239 | 254 | | |
| Robert Lewis (recalled) | 257 | 260 | | |

| EXHIBITS: | FOR IDENTIFICATION | IN EVIDENCE |
|---|---|---|
| Respondent's: | | |
| 10 | --- | 163 |
| 11 | 164 | 165 |
| 12 | 209 | 268 |
| 13 | 268 | 269 |
| 14 | 268 | 269 |
| Charging Party's: | | |
| 1 | 204 | 209 |

P R O C E E D I N G S

JUDGE BOTT: The hearing will be in order.

Mr. Altmann.

Whereupon,

ROBERT C. ALTMANN

resumed as the witness, and still under oath, was examined and testified as follows:

VOIR DIRE EXAMINATION

Q (By Mr. Hopson) Mr. Altmann, I would like to ask you some questions about the document marked Respondent's Exhibit 10. I ask you if you can tell me who typed this?

A My secretary.

Q When did she type it?

A I would assume on the morning of May 30th.

Q You don't know for sure?

A I would have to say it was the morning of May 30th.

Q Did you write or compose the document yourself?

A No, sir. It was done on counsel's advice.

Q When was it composed and by whom?

A It had to be probably done, I would imagine, on the late evening of the 29th.

Q By whom?

A It had to be done by Mr. Darby.

Q Mr. Darby was the one who composed it?

A Mr. Darby and I together, yes.

Q Was this document posted?

A No, sir.

Q Was this writing on the document precisely what was read on the date you indicated?

A Absolutely.

Q Everything was read from the document?

A Yes, sir.

MR. HOPSON: That is all I have.

JUDGE BOTT: No objection to Respondent's 10?

MR. HOPSON: I have no objections, except to the date. I don't believe that is a factual date, but I have no objection to the authentisity of the document.

JUDGE BOTT: Respondent's Exhibit 10 is admitted into evidence.

(The document, heretofore marked Respondent's Exhibit No. 10 for identification, was received in evidence.)

DIRECT EXAMINATION (Resumed)

Q (By Mr. Darby) Mr. Altmann, with regards to the last exhibit, Respondent's Exhibit No. 10, when did you read that document to the pharmacists?

A I read that as soon as I got to work that morning. I made a special point to get to work early because it had to be done about 8 o'clock that morning.

Q What morning was that?

A That was on the 30th.

Q Of what month?

A May.

Q Mr. Altmann, during the period of time in which the contract was in effect, did the pharmacy hire any pharmacists at a 40 hour work week?

A Yes, sir.

Q Did you ask your personnel officer to also check the records on that?

A Yes, sir.

Q Did she give you information pertaining to that?

A She made me a list.

MR. DARBY: I would like to have this marked as Respondent's Exhibit No. 11 for identification.

(The above document was marked Respondent's Exhibit No. 11 for identification.)

Q (By Mr. Darby) Mr. Altmann, I show you what has been marked for identification as Respondent's Exhibit No. 11. Would you tell us what this represents?

A This is representing three employees who were hired on a 40 hour basis and one employee hired on a 30 hour basis.

Q Was this done in accordance with any term and provision of the contract?

A Yes, it was. The contract allowed me to hire any additional employees,if I chose to, on a 40 hour basis.

MR. DARBY: I would like to offer that into evidence.

JUDGE BOTT: Any objections?

MR. HOPSON: No objections.

JUDGE BOTT: Respondent's 11 is admitted.

(The document, heretofore marked Respondent's Exhibit No. 11 for identification, was received in evidence.)

Q (By Mr. Darby) Mr. Altmann, there has been some prior testimony in regards to the interviewing of some of the pharmacists on the morning of May 21st. Were you at the pharmacy on the morning of May 21st?

A Yes, sir.

Q After the interviews did any pharmacist speak to you and state anything to you about the interviews which were conducted by counsel?

A Not a one; no one.

Q After the interviews were conducted by counsel, were any of the working conditions changed for the pharmacists over and beyond the reduction in the work week?

A No, sir.

Q Was any pharmacist affected, either for the worse or for the better, by the interviews?

MR. HOPSON: Objection.

MR. LECHNER: Objection.

JUDGE BOTT: Objections sustained.

MR. DARBY: I have no other questions.

JUDGE BOTT: Cross-examine.

CROSS-EXAMINATION

Q (By Mr. Hopson) Mr. Altmann, with regards to the change in the work hours, let me see if I can jog your memory a little bit. Do you recall that Memorial Day was a Monday of that week?

A Yes, sir.

Q Could it have been Memorial Day when you and Mr. Darby got together and prepared the document and the next day was the first day of the week, you came in and read it to the employees?

A No, sir.

Q Did you do any work on Memorial Day?

A No, sir.

Q You didn't meet Mr. Darby on Memorial Day?

A No,sir.

Q I would like to pin down, just to be sure we have it correct in the record as to who these supervisory pharmacists we stipulated to yesterday are. I believe the first one was Mr. Brault?

A Yes, sir.

Q Mr. Miller;

A Yes.

Q Mr. Norman?

A Yes.

Q Nix?

A Yes.

Q Silber?

A Yes.

Q Mr. Baron?

A Right.

Q Mr. Eisman?

A Yes.

Q When did Mr. Baron become a supervisor?

A Recently. Right now I couldn't give you the exact date.

Q Would it be at least after the change in working hours on May 30th?

A No, before.

Q Would it be after April 19th?

A I am not sure. There is a record of it, but I am not sure.

Q On Respondent's Exhibit 9 you list Mr. Baron as being in the unit.

A Then he had to be after April 19th.

MR. DARBY: I will propose a stipulation, Your Honor, that Mr. Baron was made a supervisor on or after April 19th; at any rate, May 7, 1973.

JUDGE BOTT: Do you accept that?

MR. HOPSON: That is fine. We will stipulate to that.

JUDGE BOTT: The record will show it.

Q (By Mr. Hopson) Mr. Altmann, with regards to the election back in November of '71, isn't it a fact that the ballots of Mr. Eisman, Mr. Miller, Mr. Norman and Mr. Zilber were challenged by the Guild in that election?

A This information I learned later, yes.

Q When you testified yesterday that the Guild was permitted to inspect the premises and had only done it once since the contract, did you mean any official of the Guild who was not an employee of NRTA?

A I met any known official of the Guild to me.

Q Do you know Mr. Meszaros?

A I know Mr. Meszaros, right.

Q Did you know he was an official of the Guild?

A I did not know that, sir.

Q Do you know now he is an official of the Guild?

A I understood from testimony that he was a director; right. That was not brought to my attention until yesterday.

Q Did you know that Mr. Paul Woods was a grievance committeeman?

A No official notice was given to me that he was.

Q I didn't ask you if you got "official notice". I asked you if you knew he was a grievance committeeman of the Guild.

A No, I did not.

Q Did you meet with him in November?

A I met with him; right.

Q Did you meet with him for social purposes or did you discuss union matters?

A When I met with him I discussed union matters; right.

Q You just assumed that he was an employee speaking on behalf of other employees and held no position with the Guild?

A When I met with Mr. Woods and members of the Guild, Mr. Woods was not the person talking to me. It was another member of the Guild. It was not Mr. Woods.

Q He didn't say anything in the meeting?

A Very little. He was not handling the proceedings.

Q Did you ever hear about any complaints from any employees about the premises, about the conditions of the premises?

A There were complaints that many employees have made or discussed with me as I go through the plant.

Q Like what?

A Like, how come the air conditioner isn't running. I explained to them the reason why. How come we don't have enough tote boxes; "I will check into that." Many employees will ask that question. How come we don't have certain things. Many simple questions that I could answer as I went through the plant and give them direct answers right then and there.

Q Had you ever asked Mr. Brault whether he had had any

dealings with Mr. Woods or any grievance committeeman at the pharmacy?

A No, sir.

Q Is the November 1972 meeting, which I just referred to, with the Union officials the only time that you were in on a grievance, toyour knowledge?

A To my knowledge, right.

Q Were you ever consulted by Mr. Brault or any of the other supervisors about any grievance matters without being directly involved with the Guild officials?

A To my knowledge, there were no other grievances by officials of the Union brought to Mr. Brault.

Q But you don't know if Mr. Brault--

MR. DARBY: Objection. I believe he has already testified--

MR. HOPSON: I believe he testified "No."

Q (By Mr. Hopson) Did you consider, in the light of the conditions that existed at the pharmacy, that formal grievances should have been filed; that you should have had more contact with the Guild? I s that the point you were making on your direct testimony?

MR. DARBY: I object. That is hypothetical, Your Honor.

JUDGE BOTT: The form may be a little off, but--

MR. HOPSON: Your Honor, he has testified--

JUDGE BOTT: I will overrule the objection. I think he

can answer the question.

THE WITNESS: That was not my function, to bring grievances. As far as I was concerned, before the contract, after the contract, conditions were excellent.

JUDGE BOTT: Did you think there were conditions in your organization which a union, acting reasonably, should have grieved?

THE WITNESS: I anticipated them, but I didn't know that they were justified or not. But I did anticipate them, yes.

JUDGE BOTT: You expected to have more grievances filed than youhad?

THE WITNESS: Yes, I did.

JUDGE BOTT: Why? What were you doing wrong?

THE WITNESS: Nothing, in my knowledge.

JUDGE BOTT: What were you doing that a reasonable person would have thought was improper? Was there anything wrong with your hours?

THE WITNESS: No. The hours were--

JUDGE BOTT: The wages were fixed by contract?

THE WITNESS: Right.

JUDGE BOTT: Was your plant sanitary, do you think, in your opinion?

THE WITNESS: Yes, it was.

JUDGE BOTT: The people had coffee breaks?

THE WITNESS: Yes, they did.

JUDGE BOTT: Rest breaks?

THE WITNESS: Right.

JUDGE BOTT: You weren't discriminating against any union people, as far as you knew?

THE WITNESS: No.

JUDGE BOTT: Apparently you had very good relationships with the union?

THE WITNESS: Yes.

JUDGE BOTT: There were no strikes?

THE WITNESS: No strikes.

JUDGE BOTT: No stoppages?

THE WITNESS: (no response)

JUDGE BOTT: Were there?

THE WITNESS: During the contract period? No. There was--

JUDGE BOTT: How did your rates compare with the rates of other employers?

THE WITNESS: Higher.

JUDGE BOTT: Did that bother you at all?

THE WITNESS: No, it did not.

Q (By Mr. Hopson) Mr. Altmann, when did you first become aware of Mr. Lechner's letter of March 7th requesting bargaining?

A It had to be a few days later. I don't know the exact date. It was mailed to me by Mr. Lewis.

Q When did you decide to change the hours of the non-pharmacist employees?

A That was discussed many times. The final decision was made some time in May. The exact date I am not sure of because it was discussed many times.

Q The decision was made though to change the hours of the non-pharmacist employees before the 29th?

A Yes, sir.

Q It could have been a week before or more than that?

A I would say approximately a week; maybe two weeks.

Q When was the decision made to change the hours of the pharmacists?

A That decision was made on the evening of May 29th.

Q But you had discussed it before; is that correct?

A I had discussed it, yes.

Q Where did you discuss it?

A I discussed it possibly, I guess, when I met Mr. Jackson on the 27th. I probably discussed it again with counsel when I met him again on the 19th.

Q The 19th of April?

A Right.

Q And you are referring to the 27th of February?

A Yes, sir.

Q To your knowledge, has any employee within the unit withdrawn from the Guild as a result of your letter of May 24th,

of your knowledge?

A Of the unit?

Q Right.

A Written on that list; right?

Q What I am asking, isn't it a fact that no employees who were members of the Guild have withdrawn from the Guild as a result of your May 24th letter?

A To my knowledge, no.

Q During the election campaign, in connection with the November 1971 election, did the Respondent actively oppose the Guild during that time?

MR. DARBY: I object to that question, Your Honor.

JUDGE BOTT: I was wondering when this was going to get raised. I wanted to think about it.

MR. HOPSON: I think it was relevant, Your Honor, to the possible animus of the company. Only a couple of years later, it ties in with the strenuous negotiations.

JUDGE BOTT: What bothers me a little bit is, I think that if you had offered evidence in your case-in-chief, even though it was outside of the 10(b) period, to show some animus as bearing on the company's motives in withdrawing recognition, I might have taken it. I am not sure--

MR. HOPSON: It seems to me, it could be rebuttal.

JUDGE BOTT: It wouldn't be rebuttal either. I will permit you to ask one or two questions.

MR. LEWIS: May we respond to that, please?

JUDGE BOTT: Respond to what? Nobody has said anything yet.

MR. LEWIS: Did we object? I would like to respond to the statement made by counsel.

JUDGE BOTT: I did not lay any ground rules, but you know, counsel, the regular procedure is for one lawyer to present Respondent's case.

MR. LEWIS: Mr. Darby will.

JUDGE BOTT: You have been consulting with him. That is perfectly proper.

MR. LEWIS: May Mr. Darby do it?

JUDGE BOTT: Yes. You are free to consult with Mr. Darby, however.

MR. DARBY: In regard to the question which was posed concerning the pre-election period of time, an employer, obviously both the courts and the Board have stated, has the right to exercise his rights under the Act as far as freedom of speech is concerned and to advise employees of what their rights are in the election. I feel that this type of information being introduced at this period of time is not warranted, forthe same simple reason thatyou ruled yesterday: that employee feelings obviously change or may remain the same from what has happened prior to the election and what happens after the election.

There are certain things that do occur once the election happens. Here, the employer had various rights prior to the election, as did the employees. Subsequent to the election, the employees are represented by the union for collective bargaining purposes since the election was won. There has been testimony here as well that the relationship between the parties, both the Guild and the pharmacy, was a good relationship, since the date of the election and the entrance into a collective bargaining agreement.

I think it is unfair to go back to what was done and what happened prior to the election to indicate anything on behalf of this employer since the date of the election.

MR. HOPSON: Your Honor, I think he is arguing to the weight the testimony should b e given and not to admissibility. I am not going to delve into everything that happened.

JUDGE BOTT: Again, I am inclined to think that there is some merit on both sides. I think that the company's position with respect to the union in 1972 is remotely relevant and of some materiality. I think it causes too many trial problems. As counsel pointed out, attitudes can change. The contract was executed. The parties had apparently a good relationship. If you had something concrete like a record of unfair labor practices of which I could take judicial notice, of which you have not apparently, I might take something like that under the Brigg Stratton case

to throw light on the motives of the parties.

Also, if you start getting into what the company did before the election, you get into whether they wrote literature and you could open up to what kind of literature it was and so on.

MR. HOPSON: Your Honor, I just want to know what your position on the question was.

JUDGE BOTT: Ask the question and I will rule on it.

Q (By Mr. Hopson) Did the Respondent oppose the union in the election campaign in November 1971.

MR. DARBY: I object to that.

JUDGE BOTT: Mr. Hopson?

MR. HOPSON: I think it certainly is relevant and admissible testimony. They have plenty of arguments as to the weight the testimony should be given. I can't argue that.

MR. DARBY: That is also conclusionary, your Honor, on the part of this witness to make the determination that they opposed the Union.

JUDGE BOTT: I am ready to rule. Counsel for the Government has indicated that it is a matter of the weight I would give to the evidence. I wouldn't give it much weight at all. It wouldn't turn this case one way or the other, as far as I am concerned. I will sustain the objection.

There is a phrase in law, old fashioned and probably corny, called "Locus penitentiae", the place where you reform

or sorrowfully give up your past ways and decide to go the way of the Lord; in this case, the way of the Taft-Hartley Act. That could have happened. There is not enough evidence in this case in that area you are talking about to tip it one way or the other.

Q (By Mr. Hopson) When, in your own mind, did you decide that the Guild no longer represented a majority?

A That feeling had to start approximately the first part of this year.

Q Would it be before February 27th?

A Yes. The inkling would have started then; right.

Q And you consulted with your attorney about it on February 27th?

A I mentioned it to him; right.

Q And you also discussed matters for negotiation?

A Yes, that was discussed; right.

Q Mr. Altmann, did you expect the Union to lose the election in November 1971?

MR. DARBY: I object to that question.

JUDGE BOTT: I don't see thatone at all. You might have asked, "Were you pleasantly or unpleasantly surprised" and you might have gotten the answer to your other question. But his expectations--

MR. HOPSON: His expectations have a lot to do with some of the issues in this case, Your Honor.

JUDGE BOTT: I am sorry. If you give me a clue -- I can't see that one. I'll sustain the objection.

MR. HOPSON: That is all.

MR. DARBY: I have no further questions.

JUDGE BOTT: You may step down.

(The witness was excused.)

MR. DARBY: I would like to call Mr. Paul Brault to the stand at this time, sir.

Whereupon,

PAUL R. BRAULT

was called as a witness, by and on behalf of the Respondent, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Darby) State your name, please?

A Paul R. Brault.

Q Mr. Brault, by whom are you employed?

A Retired Persons Pharmacy.

Q In what capacity are you employed by the pharmacy?

A Director of Professional Relations.

Q How long have you held that position of Director of Professional Relations?

A Since June 26th. The 25th or 26th.

Q Of what year?

A '73.

Q What are your job responsibilities?

A I am responsible for pharmaceutical procedures and the transferring of prescriptions between the various services, reviewing and coordinating the pending pharmacy laws, and BNDD and FDA regulations.

Q Were you affiliated with the pharmacy prior to assuming the position of Director of Professional Services?

A Yes.

Q In what capacity?

A As pharmacist-manager.

Q How long have you held that position?

A Approximately 10 years.

Q As pharmacist-manager, which was prior to June 26, 1972, what were your job responsibilities?

A I was responsible for the operation of the working areas, such as the drug picking, the pharmacists, the walk-in pharmacy, packing, telephone room, pre-packing and over-the-counter sections.

Q Were you directly in charge of the pharmacists in the pharmacy?

A Yes, sir.

Q Did you have an office in the pharmacy?

A Yes, in the pharmacy.

Q Right in the area in which the pharmacists worked?

A Yes, adjacent to the pharmacy working area.

Q In the fall of 1971, do you recall if an election was conducted by the National Labor Relations Board?

A Yes, sir.

Q Following the election, do you know if the parties entered into a collective bargaining negotiation?

A Right.

Q Did you attend those negotiations?

A Yes, I did.

Q Do you recall the length of the contract which was entered into?

A It was a one-year contract.

Q Do you recall the dates of the contract?

A May 29, 1973; '72 to '73.

Q During the year that the contract was in effect, you were the pharmacy manager; correct?

A Yes, sir.

Q Did you have conversations with pharmacists?

A Yes, I had many conversations with nearly all of the pharmacists on various subjects, personal problems, pharmacy problems, even Guild problems.

Q I show you what has been offered into evidence as Respondent's Exhibit No. 9, which is a listing of the pharmacists who were employed by the pharmacy on April 19th. Do you recognize those names?

A Yes, I do.

Q Did you have conversations with any of these pharmacists in matters pertaining to the Guild that you have stated you had?

A Yes, I did.

Q Could you go down the list for us on a one-by-one basis and state for us the name of the pharmacist that you had a conversation with and the approximate time on which the conversation occurred and what was involved in the conversation?

MR. HOPSON: Your Honor, I will object at this point to the hearsay type of evidence that is going to be elicited. I don't think it is proper.

JUDGE BOTT: I don't want to excuse the witness. I think it is unnecessary, but I think I know where counsel is going. This information that he got, certain data, he communicated that data to somebody else.

MR. DARBY: That is correct, sir.

JUDGE BOTT: Objection overruled.

MR. HOPSON: May I have a continuing objection.

JUDGE BOTT: You may.

THE WITNESS: The first pharmacist, Mr. Avella.

Q (By Mr. Darby) Would you state for us, to the best of your recollection, the approximate period of time in which you had a conversation or conversations with Mr. Avella concerning the Guild?

A I had numerous conversations with Mr. Avella during the past year, following the election and subsequent to that, wherein he stated quite strongly his dislike for the Guild, both in my office and at his desk.

Q Would you say or do you recall if Mr. Avella at any time referred to the Guild--

MR. LECHNER: Objection, Your Honor.

JUDGE BOTT: Sustained. There has been no indication that his memory has been exhausted.

Q (By Mr. Darby) Do you recall any other comments that Mr. Avella possibly or did make to you concerning the Guild?

A Mr. Avella asked me on numerous occasions why we didn't get rid of the Guild. He referred stronger than that, saying "Why don't you get rid of those bastards." Mr. Avella was quite outspoken and still is.

Q Did you have any other conversations with Mr. Avella?

A I would say they were quite frequent throughout the year. I couldn't remember exactly what else, but the gist of it was always very strong, anti-Guild.

Q Did you have a conversation with anyone else on that list?

A I had a conversation with Mr. Lena Campbell.

Q Do you recall approximately when that conversation occurred?

A Yes. There was only one conversation when she came in

to the office and was quite upset at what she termed the treatment of Ms. Kim by the Guild people, which she objected to, quite strongly.

Q Do you recall when that conversation took place?

A The best I can put it is about four months ago, three to four months ago. It was probably some time early April or thereabouts. I don't know the exact date.

Q You indicated that Ms. Campbell was complaining about the treatment of another employee?

A Another pharmacist; right.

Q What was the name of the other pharmacist?

A Ms. Kim.

Q What was she complaining about?

MR. HOPSON: Objection. I don't think this goes to whether or not Kim was disfavoring the Guild, in addition to the fact that it is hearsay. You have double hearsay involved here now.

JUDGE BOTT: More than that, I am not going to go into the nature of the dispute between Ms. Kim and the Union. We have enough here that Ms. Campbell voiced strong displeasure with the actions of the Union towards a fellow employee.

Q (By Mr. Darby) Did you have a conversation with anyone else, sir.

A Mr. Downard, who worked in the walk-in pharmacy.

Q Would you explain to us what you mean by "walk-in

pharmacy"?

A We have a small pharmacy that is separate from the main body of pharmacists which takes care of people who walk in off the street to have their prescriptions filled. It is in a separate area.

Q Is this to the right of the pharmacy; the main building, as you walk in?

A The right.

Q And this is the area where members can come in and purchase their items?

A Right.

Q Do you recall when you had a conversation or conversations with Mr. Downard?

A I had more than one conversation with Mr. Downard because Mr. Downard being sort of apart from the mainstream would ask when I went up to check in on the walk-in pharmacy, "What are the Guild boys up to now?" At other times, he told me that although he had nothing personal against the Guild, he could do without it; that he didn't need it himself.

Q Do you recall when those conversations occurred?

A I would say over the period of six months or eight months period following his appointment to the walk-in pharmacy. I don't recall that date. It was back in '72.

JUDGE BOTT: We don't have any kind of a fix on this.

Q (By Mr. Darby) Was this subsequent to the date of the

election, these conversations?

A Yes. These conversations were after the election.

JUDGE BOTT: Did you ever talk to Mr. Downard before the election?

THE WITNESS: Mr. Downard wasn't in thatposition, I don't believe, before the election.

JUDGE BOTT: Did you ever talk to him before the election?

THE WITNESS: Yes.

JUDGE BOTT: Did you ever talk to him before the election about the election or about his feelings towards the Union?

THE WITNESS: I believe so, but that goes so far back I couldn't remember.

JUDGE BOTT: I know it goes so far back. This whole thing goes so far back. We have established now that you talked to him about his feelings about the union before the election and after the election; correct?

THE WITNESS: Correct.

Q (By Mr. Darby) Mr. Brault, is Mr. Downard still working in the walk-in pharmacy?

A No, sir, he is not.

Q Do you recall where he is working now?

A He is working in the main pharmacy.

Q Do you know why he is no longer working in the walk-in?

A He requested a transfer back to the pharmacy because he

was too old to handle the walk-in pharmacy by himself.

Q Do you recall approximately when he was transferred from the walk-in pharmacy to the regular pharmacy area?

A As close as I can put it, it is about two months ago.

Q Did you have conversations with Mr. Downard prior to April 19th in 1973?

A Yes, definitely.

Q Did the conversations concerning what you have related already in your testimony occur prior to April 19, 1973?

A Yes.

Q Did you have a conversation with anyone else on that list?

A We had conversations with Mr. Garofalo on three or four occasions. Mr. Garofalo was also quite outspoken against the Guild.

MR. LECHNER: Objection, Your Honor. That is a conclusion on the part of the witness.

JUDGE BOTT: I will sustain the objection. I would like to hear what you can remember about what the conversations were and when they took place.

THE WITNESS: As I say, I never took any notes on these things. It's just a recollection that I spoke to these individuals at certain times. There was no log kept.

Q (By Mr. Darby) To the best of your recollection, you indicated that you had maybe three or four conversations?

A I had three or four. I can point to one in particular which has reference to, once again, Ms. Kim. Mr. Garofalo came into the office and also complained about the treatment by the Guild members towards Ms. Kim. He asked if I could do something about it.

Q Did he say what the treatment was, to you?

MR. LECHNER: Objection.

MR. HOPSON: Objection. The same grounds as the other one.

JUDGE BOTT: Objection sustained. We want what the gentleman said about the Union, if anything. He asked you if you could do anything about it?

THE WITNESS: Right. Mr. Garafalo talked to me on two or three or four occasions about doing something about the Guild members.

JUDGE BOTT: Doing something about the Guild members because he disapproved of something they were doing?

THE WITNESS: Yes.

JUDGE BOTT: With respect to Ms. Kim?

THE WITNESS: Yes, sir.

JUDGE BOTT: Two or three times he complained about it?

THE WITNESS: Yes.

JUDGE BOTT: Was Mr. Garofalo's attitude towards the Guild coming as any surprise to you?

THE WITNESS: No, sir.

JUDGE BOTT: You knew that he was against the Guild?

THE WITNESS: Yes.

JUDGE BOTT: Did you know it before the election?

THE WITNESS: Yes, I guess I did; right.

Q (By Mr. Darby) Do you recall when you had these conversations, the conversations with Mr. Garofalo complaining about the treatment of Ms. Kim? Did that occur subsequent to the date of the election on November 18, 1971?

A That occurred at the same time that Ms. Campbell complained. That would have been about three or four months ago, probably early April, in that area.

Q Did Mr. Garofalo mention anything else to you about the Guild?

A Nothing other than that he had no use for the Guild, which he repeated, as I said before, on more than one occasion.

Q Did he volunteer it or vocalize it to you?

A Yes, sir

Q And this was subsequent to the election?

A Right.

Q Was it before April 19, 1973?

A Yes.

Q Did you have a conversation with anyone else on that list?

A I had a conversation, many conversations, with Mr. Giffen.

Q Do you recall the approximate time that you had conversations with Mr. Giffin?

A The conversations with Mr. Giffen took place from prior to the election until I was transferred to the Director of Professional Services.

Q In June, 26th?

A Right.

Q Would you relate for us, first of all, what you recall in a conversation in which-- with Mr. Giffen?

A One of the conversations took place at Mr. Giffen's desk. As I was walking by I believe Mr. Giffen was upset up about the noise in the pharmacy and he said something to the effect,"Can you get those Guild people to quiet down?" He also said, on other occasions, that he had nothing personal against the Guild, but he just couldn't use them.

Q Do you recall when these conversations occurred as to a period of time?

A I would say from prior to the election, again until I left.

Q Did you have these conversations with Mr. Giffen prior to April 19, 1973?

A Yes, sir.

Q Did you have any conversations with anyone else listed on that list?

A I recall one conversation with Mr. Goldman. I believe

that was at his desk and it was some time ago. At that point I had asked him if-- I believe I asked him if he was-- if the Guild was bothering him. He replied that he didn't have any use for them. These are basically his words.

Q Do you recall when that conversation occurred?

A No. It was some months ago when. I couldn't place it to any exact date.

Q Was it prior to April 19th?

A I would say yes, definitely.

Q What were you referring to when you were asked if he was being bothered?

A The nearest I can recollect is that there was some activity in that particular area, but they were talking to various pharmacists. Once again, I would have to say that it had been reported to me that the Guild members were talking to various pharmacists. The nearest I can come to it is, it was on that occasion that I talked to Mr. Goldman.

Q Would that have been approximately the same time as some of the other pharmacists relating problems with Ms. Kim?

A It could have been, yes.

Q But it was prior to April 19th?

A Yes, sir.

Q To the best of your recollection, did you have a conversation with anyone else on that list?

A I had conversations with Mr. Johnson. These go back to

prior to the election, on through. Mr. Johnson, on frequent occasions, was in the office. On one particular occasion he was complaining also about, once again, this Ms. Kim.

Q That occurred subsequent to the election, I gather, in regard to Ms. Kim; correct?

A Yes; right.

Q What did he say to you in regard to that conversation?

A He asked, I believe, if there was anything we could do about getting them off Ms. Kim's back or something to that effect. Once again, I can't give a direct quote on it.

Q Did you have a conversation with anyone else on the list?

A Ms. Kim, on three or four or more occasions, who complained that she was-- Well, the original complaint from Ms. Kim came through Ms. Campbell, Mr. Garofalo and Mr. Johnson.

Q Did Ms.KIm ever come in to speak to you about it herself?

A Also Mr. Downard, yes. Ms. Kim came into the office and said that she didn't want to make any trouble, but wanted to be left alone and wanted to do her work; that she had been told to slow down her work somewhat; that she was doing too many.

Q She was doing too many what?

A Prescriptions.

MR. HOPSON: Your Honor, I am going to object unless he ties it in. Again, there should be some indication that the employee has told him something about the Guild. This could be

anything, somebody asking her to slow down. He has to pin it down.

JUDGE BOTT: I am inclined to agree with that. I won't give much weight to the testimony unless there is some connection. You can explore it.

Q (By Mr. Darby) Did Ms. Kim say who was complaining to her about doing too much work?

A Yes. She said it was the Guild people who were complaining. They were complaining about her and to her. They were asking her why she didn't want to join.

MR LECHNER: Objection, Your Honor. I am afraid that "the Guild people" is much too amorphous a definition for us to be able to get anything on that kind of testimony.

JUDGE BOTT: I am not sure that this is true. Apparently a certain group of people were identifiable as far as this witness was concerned.

Does the term "the Guild people" have some kind of meaning to you?

THE WITNESS: Yes, sir. They were referred to as "the Guild people." It was quite as simple as that. That was by many of the non-Guild pharmacists.

JUDGE BOTT: I'll let the record stand.

Q (By Mr. Darby) Were they asking her to do anything else in addition to not work as much, the people that were speaking?

JUDGE BOTT: You said they were asking her to join the Union?

THE WITNESS: Right.

Q (By Mr. Darby) Do you recall when you had that conversation or these conversations with Ms. Kim?

A As I said, there were quite a few, mostly in the early part of the year: I'd say probably the first three months or so of the year.

Q Did you have conversations with anyone else on that list?

A Yes. I had frequent conversations with Mr. Levy who complained frequently about the Guild interfering with his work.

Q What did he say to you about it?

A That he should be left alone to do his own work the way he wanted to and he didn't need anybody to tell him how to do his work.

Q Do you recall when you had the conversations with Mr. Levy?

A From after the election in this case to approximately the time he had left for vacation, which would have been early this year.

Q Did he indicate who was complaining about the work that he was doing and that he didn't want to be bothered?

A Yes. He said that the Guild people were interfering with his work, with his desire to do as much as he could do.

Q Were the pharmacists required under the contract to fill a certain number of prescriptions a day?

A Yes. A minimum of 175.

Q If they filled more than 175 a day, did they receive a bonus?

A If they filled more than 140 daily they received a bonus.

Q What kind of a worker was Mr. Levy?

A Mr. Levy was an excellant worker and produced, I would say, quite heavily.

Q Was he referring to the fact of his work, the number of prescriptions he filled per day or per week?

A They were being interfered with, yes.

Q By this group of people?

A Yes.

Q Did you have a conversation with anyone else on that list?

A I had one conversation with Ms. Lewis.

Q When do you recall that this was?

A This was at the time that we were having difficulties with Ms. Kim. My assistant reported to me that the Guild members were in the vicinity of Ms. Lewis' counter, talking to her. HIs comment was,"I think they're going after Ms. Lewis now." I would ask Ms. Lewis if there was anybody bothering her and she said at that time that she didn't

bother with the Guild at all.

Q Do you recall when you had that conversation with her?

A That would have been also around the time that Ms. Kim had her problems.

Q This would have been in the beginning of the year?

A Right; approximately the first three months or so.

Q Did you have a conversation with anyone else on that list?

A Mr. Maciulla.

Q Do you recall when you had a conversation with Mr. Maciulla about the Guild?

A Mr. Maciulla and I had two or three conversations. I remember a conversation shortly after he came to work. This would have been following the election. What brought it up, I do not know. I do know at that time that he indicated that he didn't want any part of the Guild. Subsequently, Mr. Maciulla had a heart attack and returned to work after a long absence. This was around the time that there was a lot of activity with the Guild members.

Q Can you place a date on it? Was it the beginning of this year?

A It would have been at the beginning of the year when he returned. I believe it was the first or second month of the year. At that point I was sort of concerned about his condition and asked him then to not get himself too upset.

He said that he had never had anything to do with them anyway, so they weren't going to bother him.

Q Did you have a conversation with anyone else on that list concerning the Guild?

A I had one conversation with Ms. Testamark.

Q Do you recall when that was?

A That occurred about the same time as the incident with Ms. Kim. I understood from the same source, from Mr. Eisman, that she was being approached and I asked her if she was being bothered. She replied that she also had no time for the Guild.

Q That was the conversation--

A About the same time, within the first three months of this year anyway.

Q Did you have a conversation with anyone else on that list concerning the Guild?

A I had a conversation with Ms. Turner. Mr. Altmann told me that Ms. Turner had contacted him at his house or had spoken to his wife and said she had something important to relate to him about the Guild. He asked me to look into it after making two or three attempts to contact Ms. Turner, without success. Eventually she returned to work. She had been out on a sick leave. I asked her for the information and she said she didn't want to talk to me about it. Subsequently she went to see Mr. Altmann. I understand that

sb--

MR. LECHNER: Objection to his understanding.

JUDGE BOTT: Sustained.

Q (By Mr. Darby) Did Mr. Altmann ever talk to you about Ms. Turner?

A Yes.

Q What did he say to you about Ms. Turner?

MR. HOPSON: Objection.

MR. LECHNER: Objection.

JUDGE BOTT: If he is going to relate what the previous witness related about what Ms. Turner showed him, then I am not taking it. Sustained.

Q (By Mr. Darby) Do you recall when this incident occurred with Ms. Turner?

A Early April.

Q Did you ever have any other conversations with Ms. Turner?

A Yes. This was earlier than that. Ms. Turner had come into the office and told me that she was disappointed with the Guild or disillusioned about it because she at that point said she thought that it was a matter of ethics, but it became a matter of economics rather than ethics and she didn't want any part of it.

Q When was this conversation?

A This probably was the latter part of '72.

Q Did you have a conversation with anyone else on the list?

A I had three or four conversations with Mr. Wolf, at his desk and also at the office where he frequently complained about the noise in the pharmacy.

Q What did he say?

A He said that the Guild people were making too much noise and could I do something about it. I said, "I'll take it up with the Guild." He said, "Forget about it. They're not going to do anything."

Q Do you recall when you had that conversation?

A I had more than one. I had three or four conversations or perhaps more with Mr. Wolf who had complained about the noise. It would have been from the election on through.

Q Was it also this year?

A Prior to the election. Yes, sir.

Q Did you have a conversation with Mr. Wolf during the contract, subsequent to the election?

A Yes.

Q Did you have conversations with Mr. Wolf during 1973?

A Yes.

Q What were the conversations with Mr. Wolf in 1973?

A As I stated, pretty much on the same vein. Mr. Wolf would complain fairly frequently about the noise and the meetings, the gatherings that were going on and he attributed

to the Guild people.

Q Did you ever discuss with any supervisory person in the pharmacy any of these conversations that you have had with the pharmacists?

A Yes. I would discuss some of them with Mr. Eisman and more frequently with Mr. Altmann at frequent meetings that we had weekly or daily staff meetings or just in conversations in reporting the day's activities.

Q Did you ever keep notes on these conversations?

A No, sir.

Q Did anyone ever ask you to engage in these types of conversations?

A No, sir.

MR. DARBY: No further questions.

JUDGE BOTT: We will take a brief recess now.

(Whereupon, a short recess was taken.)

JUDGE BOTT: The hearing will be in order.

MR. HOPSON: I have no questions.

JUDGE BOTT: You are excused.

(The witness was excused.)

MR. DARBY: I would like to call Mr. Robert Giovannetti to the stand, please.

Whereupon,

ROBERT J. GIOVANNETTI

was called as a witness, by and on behalf of the Respondent,

and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Darby) State your name for the record, please?

A Robert J. Giovannetti.

Q Mr. Giovannetti, by whom are you employed?

A I am employed by Jackson, Lewis, Schnitzler & Krupman.

Q In what capacity are you employed by Jackson, Lewis?

A I am an associate with the firm.

Q How long have you been associated with the firm?

A I have been associated with the firm since Feburuary 1973.

Q Are you familiar with the Retired Persons Pharmacy?

A Yes, I am.

Q I would like to direct your attention to May of 1973. Did you go to the pharmacy at all during the month of May?

A Yes, I did. I went there on May 21st, with you and Peggy Braden.

Q What did you do at the pharmacy on the 21st of May?

A We went there to interview employees for the purpose of preparing the defense to an unfair labor practice charge that had been filed by the Metropolitan Guild of Pharmacists.

Q Did you interview the pharmacists?

A Yes, I did.

Q Where did you interview the pharmacists?

A I interviewed them in the small room on the second floor. I believe it's in the accounting department.

Q Do you recall what time you began to interview the pharmacists?

A About 7:30 in the morning.

Q What did you say to the pharmacists that you interviewed?

A I explained to them that I was an attorney representing the Retired Persons Pharmacy; that we were in the process of preparing the defense of the charges that had been filed by the Guild and I said I would like to ask them some questions. I assured them that if they didn't want to answer my questions, it was fine; they could leave; they could stop the interview at any time they wished and any questions they didn't want to answer they didn't have to answer.

Q Did you state that to them from the top of your head or did you--

A I read that from a prepared statement.

Q Did you also just ask the questions of the pharmacists that you spoke with from the top of your head?

A I also had a list of prepared questions I asked.

Q I show you what has been in evidence as General Counsel's Exhibit No. 11(a) through (c) and I ask you if that is the introductory statement as well as the questions which you read to the pharmacists?

A Yes, they are.

Q Do you recall how many pharmacists you spoke with?

A I spoke to about seven pharmacists.

Q Did you speak to them in a group?

A No, I didn't. I spoke to them individually.

Q Did you ask them any questions which were not on that form?

A No, I did not.

Q Did any of the pharmacists you spoke with say that they did not wish to answer the questions?

A Yes. Two or three of them said that.

Q What did you say to that?

A At that point I said "Fine. You can leave."

Q What did you do with the completed questions from these pharmacists that did answer?

A I returned them to you and they were filed in the office.

MR. DARBY: I have no other questions.

JUDGE BOTT: Do you have anything?

MR. HOPSON: No questions, Your Honor.

MR. LECHNER: No questions.

JUDGE BOTT: You are excused.

(The witness was excused.)

MR. DARBY: May I have a recess for a moment so that I may confer with Mr. Lewis.

JUDGE BOTT: Yes.

(Whereupon, a short recess was taken.)

JUDGE BOTT: Back on the record.

MR. DARBY: At this time, Your Honor, I would request that the documents which were subpoenaed by the Respondent in regard to this matter and served by registered, return receipt mail on August 8, 1973, on Mr. Francis F. Frary, President, Metropolitan Guild of Pharmacists, be produced and submitted to us.

Do you have a copy of the subpoena?

JUDGE BOTT: No. I have no idea what you are talking about, but apparently you did subpoena. This is a pre-trial subpoena, I assume.

MR. DARBY: That is correct.

JUDGE BOTT: It was issued by the Regional Director.

MR. DARBY: I have the original copy, which I will show you at this time and I will provide this afternoon copies for the record.

JUDGE BOTT: Does the Guild have a response?

MR. LECHNER: Yes, Your Honor. We have a petition here to revoke the subpoena, which I guess should be marked in evidence as Guild Exhibit 1.

(The above document was marked Charging Party Exhibit No. 1 for identification.)

I would verbally argue with respect to the different points raised.

JUDGE BOTT: I'll be glad to hear you. Procedurally,

the subpoena ought to be made a part of the record. You will take care of that, Mr. Darby?

MR. DARBY: Yes, I will make copies of it.

JUDGE BOTT: I don't know what the rules provide for a petition to revoke.

MR. DARBY: We request that the ruling be made a part of the record.

JUDGE BOTT: First of all, I want to hear from the parties. I want to hear from Mr. Lechner. I want to know what the General Counsel's position is on relevancy and so on.

MR. LECHNER: Your Honor, the subpoena very obviously searches the Guild files for all evidence of membership and dues payment, by any and all individuals employed at the Retired Persons Pharmacy. In our view the subpoena is far too broad in that respect. It is quite obvious that the Respondent is seeking what the Charging Party regards as confidential information. That really is no business of an employer, under these circumstances, where there is a certified union which has been duly certified after an election. It obviously goes to the relevance of the material sought in this particular case.

It is quite obvious from the law that Respondent has the dual burden of proving that it had a clear and convincing objective evidence at the time it made its decision to cease to bargain, to refuse to bargain, any further with the

certified representative.

It is quite apparent from the subpoena and from the conduct of the case that Respondent on April 19, 1973, or any time before that, did not have the information which they seek from this subpoena. Therefore, it seems to me that the information, on its face, is irrelevant because it does not go to Respondent's state of mind or the evidence available to it at the time that it made its decision.

If a certified union's files were opened under these circumstances, Your Honor, the confidentiality of the communications, the dues payment, the membership between it and its members would be destroyed. It would create a precedent that would be totally at odds with the very clear delineation of cases with respect to the burden of proof being on Respondent to produce the evidence that it had available to it, not to the union.

Whether our files would show that every member of the Retired Persons was a member on that date or that no persons in the unit were members on that date, it would be irrelevant completely to proving whether or not Respondent had objective evidence, clear and convincing objective evidence, of the Union's majority status as of April 19th.

I will go a step further and maintain that membership in the union, dues payment to the Union is irrelevant to whether or not an individual supports or does not support the

bargaining status of a union. Not whether they are an advocate of the union; that is not the issue. Not whether they like the union or simply dislike the union; that is not the issue. But rather, whether they believe that the union should represent them as the sole collective bargaining agent in the unit designated by the Regional Director. That issue was determined, Your Honor, on November 1971. A certification was issued thereafter.

I will go a little further with some other points raised in the petition to revoke, Your Honor. It has also been served on the wrong person. Francis Frary, who was the recipient of the subpoena and to whom it is directed, is not an officer of the Guild, is not even a member of the Guild any more and has no connection with the Guild whatsoever. He was once an officer of the Guild, but he is not now, nor at the time the subpoena was served some months before that.

I think, all it is is a fishing expedition or a bootstrap or an attempted bootstrap for a case that is weak on the part of the Employer.

JUDGE BOTT: Does the General Counsel have any comments?

MR. HOPSON: I would join in that and I would also point out that apparently Respondent is attempting to elicit information that was obviously what it was unsuccessful in getting in its unlawful interrogation on May 21, 1973. They are doing the same thing as they did on May 21, 1973.

JUDGE BOTT: Mr. Darby, do you have anything to add? Do you have anything to add to your subpoena which is clear on its face? Do you have any comments on the propriety; why I should not grant the motion to quash?

MR. DARBY: Yes. I would like to respond. Your Honor, in regard to our response, we do feel and continue to feel, as we did initially when we served the subpoena, that the material which is being sought is relevant to the issue of this proceeding and therefore is not too broad. The person upon whom it was served is the person of record, to the best of our knowledge, and who signed the contract. Obviously the subpoena has been received and there are other persons in the Guild offices who are aware of it and could have produced the documents requested and have been able to testify to that material at this time.

We would like to point out that yesterday, when Mr. Hopson objected to questions which were posed by me to Mr. Robert Altmann concerning what Paul Brault told him, the objection was overruled and at that time Mr. Lechner stated that the issue in this case is whether the Guild had a continuing majority. Now, it appears today that Mr. Lechner's viewpoint has changed. He is now stating that this issue is irrelevant. I beg to differ with him. I think it is relevant and I think it should be produced now and examined by the exhibits and the material that we subpoenaed.

JUDGE BOTT: I am ready to rule, without passing on the merit of the Guild's points with respect to the breadth of the subpoena, its service on the wrong person or the confidentiality of the material. I rule on the basis of point 4 in the motion to quash, as amplified in counsel's statements, joined in by counsel for the General Counsel, that the matter requested is irrelevant and I hereby quash the subpoena.

The petition to revoke the subpoena will be Charging Party's Exhibit 1.

(The document, heretofore marked Charging Party's Exhibit No. 1 for identification, was received in evidence.)

Mr. Darby will supply two copies of the subpoena.

MR. DARBY: That will be Respondent's No. 12.

(Respondent's No. 12 was reserved for the subpoena.)

For the record, I would like to take an exception to that.

JUDGE BOTT: You certainly have an automatic exception.

MR. LEWIS: Your Honor, when I observed that the trial in this proceeding was going faster than we had anticipated, by failure of General Counsel to cross-examine, I called our next witness, Ms. Peggy Braden, who at that time was in Chevvy Chase. I called here twenty-five after ten and I would

imagine that she should be here any minute now. If we could, we would ask for a few minutes recess.

JUDGE BOTT: How much more testimony do you expect to have?

MR. LEWIS: It will depend so much on the rulings that you make in the course of the day.

JUDGE BOTT: Assuming my rulings are all favorable to you?

MR. LEWIS: We would request that you ask that again about 2 o'clock. Could you?

Just for the record, I made a mistake. It is going to be Mr. Darby to testify as our next witness with Ms. Braden examining him.

JUDGE BOTT: I assumed that was the way it was going to be. Ms. Braden has arrived.

Whereupon,

GEORGE HARRISON DARBY

was called as a witness, by and on behalf of the Respondent, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Ms. Braden) Would you state your name for the record?

A My name is George Harrison Darby.

Q By whom are you employed?

A By the firm of Jackson, Lewis, Schnitzler & Krupman; New York City.

Q In what capacity are you employed by this firm?

A I am an associate with the firm.

Q How long have you been employed by them?

A Six years, August 13th.

Q Mr. Darby, directing your attention to the end of February 1973, do you recall if you traveled to Washington, D.C. at that time?

A Yes, I did.

Q Do you recall what the date of that trip was?

A It was February 27, 1973.

Q Did you come by yourself or did you travel with someone else?

A I traveled with one of the senior partners of the firm, Mr. Lewis Jackson.

Q What was the purpose of this trip?

A We came down, as far as I knew at the time, in order to discuss with the Retired Persons Pharmacy the contract which was expiring, with regards to the new negotiations which would probably be coming up shortly thereafter.

Q Did you review this agreement in preparation for that with anyone?

A Yes. I reviewed it with Mr. Louis Jackson. We reviewed it,as a matter of fact, on the shuttle flight down that

morning. I had been asked by Mr. Jackson, before coming down on the 27th, to make an extra copy of the contract which we had in our files. I did so prior to the 27th trip and on the way down Mr. Jackson sat next to me and reviewed the contract and posed various questions to me about what articles meant in the contract and what should be possibly changed for the negotiation of the new agreement. I believe it was his intent at that time that possibly I would be involved in negotiating the new contract.

Q Do you recall any specific articles in the contract that were discussed?

A Yes. As a matter of fact, he made some marginal notations on the copy which I had made. He asked that I remember the maternity leave clause would have to be changed in accordance with the new EEOC regulations concerning maternity leave. He questioned the fact under severance pay that the last stage of the severance pay article left it open that the parties would agree what the severance would be for any employee who was employed for more that about five years and he thought that should be tightened up.

He discussed with me the wording in regard to the year end Christmas bonus and he discussed certain provisions involing the grievance arbitration article of the contract. There was a clause in there that he particularly liked and thought maybe we should use it in some of our other contracts

we negotiated. He also asked me at the time if I knew whether or not the pharmacists had been advised, as he felt was necessary in accordance with the terms of the contract, that they had the right to withdraw from membership before the expiration of the contract. I told him I did not know and I think probably that was about the main thing, the points that we covered on our trip down.

Q I would like to direct your attention to the end of May of this year, specifically May 21st, which is a Monday. Do you recall if you were in Washington, D.c. on that day?

A Yes, I was.

Q Where were you?

A I was at the pharmacy.

Q Were you with someone else at the time?

A Yes. I was with Mr.Robert Giovannetti, also of the firm, and I was with you, Ms. Peggy Braden, also from the firm.

Q What was the purpose of this meeting?

A We had come down to Washington in order to interview the pharmacists who were employed by the pharmacy in preparation of the defense to unfair labor practice charges which were filed by the Guild against the pharmacy.

Q Do you recall when you were advised that the charge had been filed?

A Yes. I was advised about it on the Thursday, May 17, 1973. Mr. Robert Altmann called me and told me that he had

received a charge which was filed by the Guild against the pharmacy. I also recall that in conversation with me about the charge, it was not exactly right; that the wording of the charge was not anything like I could understand. So I asked you to call the Board and ask them what kind of a charge was filed by the Guild against the pharmacy. We did call the Board and it was a totally different charge than the one which was received by Mr. Altmann. I was advised about this over the phone conversation with Mr. Altmann and I did call him back and tell him what the Board had in regard to their charge.

Q Had you had any indication prior to that time that charges were going to be filed by the Guild?

A Yes, I did.

Q How did you receive this information?

A Mr. Lewis advised me of the fact that charges were going to be filed by the Guild because he learned about this from a conversation with you.

Q Do you recall approximately what time of the year it was?

A It was in the beginning of May. You had advised me that the Board had dismissed the petition which was filed and that you had a conversation with Mr. Lechner wherein he indicated also that the Guild was going to file charges against the pharmacy. Mr. Lewis also advised me of the fact, stating that you had told him that they were going to file charges.

Q Did Mr. Lewis ask you to do anything in anticipation of these charges?

A Yes, he did. He asked me to research the law in regards to whether or not we would have the right to interview pharmacists in preparation of the defense of the charges.

Q Did you do that?

A Yes, I did.

Q I assume that you read cases to familiarize yourself with the law. Approximately how many cases did you read?

JUDGE BOTT: Are you going to ask him what his opinion was with respect to what the law is, after you get through with that question?

MS. BRADEN: No.

JUDGE BOTT: I think that is completely irrelevant whether he researched the law or not. It is unimportant is going to be held to be liable if it violated the law, regardless of its good faith, or regardless of whether it was acting on the advice of counsel, regardless of whether counsel is competent or not. Let's get down to the interviews he had.

MS. BRADEN: I am not trying to elicit the opinion of the witness.

JUDGE BOTT: You want to show what he looked up and I sustain the objection.

MS. BRADEN: I would like to state for the record the

purpose of the question.

JUDGE BOTT: I am not willing to hear it. Let's go on with your next question.

Has Mr. Lewis finished advising you with respect to the comments you want to make or your objections?

MS. BRADEN: Would Your Honor permit me to have five minutes to discuss with Mr. Lewis what he--

JUDGE BOTT: I would direct you to ask your questions, if you have any.

MR. LEWIS: May I confer with Ms. Braden a moment, please?

JUDGE BOTT: You may confer. You have been doing that for the last few minutes.

MS. BRADEN: Thank you.

Q (By Ms. Braden) After you had completed your research, did you do anything in anticipation of charges being filed?

MR. LECHNER: Objection. The question is too broadly stated.

JUDGE BOTT: I don't know how he is going to answer the question. Perhaps he knows what you are talking about. I'll overrule the objection.

Q (By Ms. Braden) Did you make any further preparations for the defense of this charge, after you had completed your research?

A Yes, I did. I drafted upan introductory statement which

would be able to be used by whoever at that time was going down to Washington to possibly interview the pharmacists so that the person could read the statement to the pharmacists. I also assisted in drafting up questions and answers that would be posed to the pharmacists. The way it occurred was, originally--

MR. LECHNER: I don't think the answer is any further responsive to the question.

JUDGE BOTT: She did say "Did you do anything else in preparation" and he said he prepared the introductory statement and assisted in preparing the questionnaire. That's what he did. What next?

Q (By Ms. Braden) Do you recall when you did this?

A This was done mid-May. You and I had worked on the introductory statement and the questions. You had drawn up some questions and submitted them to me as well. I compared them with the questions that I had . I eliminated some of the questions. I changed the introductory statement and the reason I know it was done mid-May was because I had what I thought was a draft of the statement that we coulduse as well as questions which I thought were relevant. That was typed in final and I know it was submitted to Mr. Robert Lewis in a final form for him to review and approve on May 11th.

Q Did Mr. Lewis make any changes in these--

MR. HOPSON: Your Honor, we don't contest that the

questions were drawn up by the law firm.

MS. BRADEN: I am willing to withdraw the question.

JUDGE BOTT: On advice of counsel. Proceed, Ms. Braden, if you wish. You have that in the record. I wish you would get to something more material, counsel.

MS. BRADEN: Thank you.

Q (By Ms. Braden) When Mr. Altmann called you on the 17th to inform you that the charges had been filed, what did you do?

A I asked MR. Altmann if it would be all right if I came down the next morning, which would have been the 18th, in order to discuss with him what we were planning to do.

Q Did you make such a trip?

A Yes, I did. I went to Washington on Friday morning, May 18th. I met with Mr. Robert Altmann.

Q Would you tell us what the substance of your conversation with Mr. Altmann was?

A I came down to Washington on Friday the 18th and I advised Mr. Altmann that it was our intention to interview the pharmacists to prepare for the defense to the charges that were filed. I mentioned to Mr. Altmann that I was going to have to check out the areas in which the interviewing would take place. Mr. Altmann at one point had indicated I could use his office and I told him that I wanted to try and find areas in which the interviewing would not in any way be

coercive to any of the pharmacists. I know that Mr. Altmann also took me down to the basement of the building, thinking that possibly one of us could sit in a storeroom area. It was eventually decided that there were three areas that could be used. One was the library. One was the accounts receivable office. One was the secretarial office on the first floor.

I explained to Mr. Altmann the purpose in which this would be done and told him that we would be flying in that Sunday night and that we would be there on Monday morning at 7:30 in order to commence interviewing the pharmacists, as soon as they started work, in order to have at least possible interference with the production of the pharmacy as possible.

Q Did you set up a procedure whereby this interview would take place?

A I don't think I really set up a type of procedure. I spoke to Mr. Altmann and asked him: that there would be three of us coming down, myself, Ms. Braden and Mr. Giovannetti, and we would use these areas. When we came in in the morning, if they could select pharmacists and just ask them to come in and speak with us.

Q Did you in fact conduct these interviews?

A Yes, I did.

Q When did you do this?

A 7:30 a.m., Monday morning, May 21st of this year.

Q Did you use the questions and the answers which you had previously submitted to Mr. Lewis?

A I used the final, retyped version.

Q Mr. Darby, I show you General Counsel's Exhibit No. 11. Is that what was used to do the interviewing?

A Yes, ma'am. This is the statement that I read and those were the questions that I asked.

Q Did you in fact interview the pharmacists?

A Yes.

Q How many did you interview?

A I interviewed, I believe, about 13 pharmacists and I also interviewed a supervisory pharmacist.

Q Where did the interviews take place?

A I interviewed them in the secretarial office on the first floor.

Q What did you say to the pharmacists?

A I read the statement and if they indicated to me or sat there, or indicated okay, then I began asking the questions.

Q Did you ask any questions which are not on that list?

A No, I did not.

Q Did any of the pharmacists refuse to speak to you?

A Yes, some of them did. I don't recall exactly who or the number. I might even say three or four of them did refuse

to speak with me. I said, "Thank you very much" and "It was nice meeting you" or words to that effect.

I would like to say that when the pharmacists came into the room, I tried to place them at ease. I offered some of them cigarettes because, naturally, I was smoking. Then I tried to make them feel at ease and if they did not still. wish to speak with me, then I just said "Thank you."

Q Did any of the pharmacists whom you spoke to question you as to who would receive these forms?

A I don't recall if they specifically asked me as to who would see the forms. I do recall them asking what was the reason for the forms, what was going to happen to them. I said they were for my use, my purposes; that they were going to be held and retained by me.

Q What did you do with the questionnaires that were completed?

A I brought them back to the office and filed them.

Q Did you show the completed questionnaires to anyone from the pharmacy?

A No, I did not.

Q Was Mr. Paul Woods one of the persons that you interviewed?

A Yes, it was.

Q At the time that you interviewed Mr. Woods, did you know anything about him except that he was an employee of the

pharmacy?

A I have never seen any of those pharmacists, to the best of my recollection, before that. I didn't know anything about them.

Q Did you know that Mr. Woods was a member of the grievance committee for the Guild?

A No, I did not. I know now and I probably discovered it after that, but I didn't know any of them then; no.

Q Do you recall if Mr. Vic Meszaros was one of the pharmacists you interviewed?

A Yes.

Q Do you recall the conversation that you had with him regarding the interview?

A Yes. Mr. Meszaros came in and he sat down and I read him a statement and he asked me what the questions were. I read him the questions off. I just read from one question to the next, so that he would be aware of what the questions were because he indicated that he wanted to know the questions before he would respond to any of them.

After I read the questions he said he didn't want to answer any of these questions. I said, "Okay." He asked me if he could have a copy of the form and I indicated that this was my only copy because his name was on it. He wanted it because his name was on it. I advised him of the fact that these forms were strictly confidential and they were for my

use.

MR. HOPSON: Objection. I don't believe he laid the foundation when Mr. Meszaros was on the stand for that part of the conversation. That's the first I have heard of it. No foundation has been laid. I don't think he can testify to it at this point.

MS. BRADEN: Your Honor, I was not present during this testimony. I am unaware of what has been going on here.

JUDGE BOTT: Let me think about it for a minute.

This is not the rule that you are invoking, counsel, I don't believe, where you are trying to impeach a witness. This is a respondent or a defendant's version of the conversation which another witness described. You don't have to warn the witness before you can use it. Objection overruled. Whatever your conversations--

THE WITNESS: I said the forms were going to be kept by me and I did not give Mr. Meszaros a copy of the questionnaire. Mr. Meszaros left. I probably said, "Thank you very much."

Q (By Ms. Braden) Would you please tell us the purpose of interviewing the pharmacists?

A Yes. I explained briefly, the purpose of interviewing the pharmacists was in order to prepare a defense to the allegations in the charge.

Q Could you explain that to me in greater detail?

A I knew from the law, if that's what you are getting at--

MR. LECHNER: Your Honor, I am going to have to object. Obviously the question isn't phrased well enough for the witness to know what thequestion means when the witness says "If that's what you're getting at." If we want a response here that is of any relevance, I think the question ought to be stated with some specificity so we can get an answer.

JUDGE BOTT: The question was the purpose.

MS. BRADEN: He stated that the purpose of the interviewing was in order to prepare a defense for unfair labor practice charges. I would like his answer.

JUDGE BOTT: What is "prepare a defense"? What kind of a defense did you need when the employer had all the evidence that the union did not represent a majority. In greater detail, what defense did you expect to develop?

THE WITNESS: Your Honor, I knew at the time that there was a contract. I knew that there was a presumption which was a rebuttable presumption, and this is from reading the cases, and I alsoknew that there were two methods of defense to this type of an allegation. One was objective considerations, which the company could have, and the other one or second type of defense was that at the time or the date of the refusal the union did not represent a majority in fact.

I would assume at that point of time, since I had not investigated it thoroughly and I hadn't investigated it at all, I knew that the client probably had objective considera-

tions. Therefore, as an alternative defense, I wanted to be able to present no majority impact on the date of the refusal because of the fact that once the objective considerations were introduced into evidence, I would not be able toknow until Your Honor rendered his decision whether or not the objective considerations would warrant in your mind the refusal to bargain. Therefore I wanted to prepare the defense on the second alternative, which was no majority impact on the date of the refusal. The only way I could do this was by speaking to the employees, the pharmacists themselves.

Q (By Ms. Braden) Was part of the purpose of your interview to ascertain objective considerations for the pharmacy's refusal to bargain?

MR. HOPSON: Objection. Leading.

JUDGE BOTT: I would like to hear the answer.

THE WITNESS: The answer is "No."

Q (By Ms. Braden) Following these interviews, do you know if the Guild took any action?

A What do you mean by "action"?

Q Following these interviews, did the Guild subsequently file any further charges with the Board?

A Yes. The Guild amended its original charge which was filed and alleged in the amended charge that the interviews which were done were in violation of section 8(a)(1) of the

Act. That, I believe, was done the day after the interviews on the 22nd of May.

Q After the charge had been amended, did you have any discussion concerning what the effect of this would be on your preparation of the defense?

MR. HOPSON: Objection. I don't see any relevance whatsoever to this. It sounds more like it is going to be an argument than facts coming out of that.

JUDGE BOTT: Counsel, I hope you are not going into the actions that your firm took to file motions with the Board and that type of thing now.

MS. BRADEN: No, Your Honor.

JUDGE BOTT: After the charge was filed. I really don't see the relevance. I am sorry.

Q (By Ms. Braden) Did you subsequently have a discussion with Mr. McHugh and Mr. Altmann concerning the Guild's amended charge?

MR. HOPSON: The same objection, Your Honor.

MR. LECHNER: What happened in the client's mind, what discussion they had with their counsel subsequent to the charges being filed.

JUDGE BOTT: I agree. Objection sustained.

MS. BRADEN: Your Honor, there isa purpose to this question beyond ascertaining what was in Mr. McHugh's, Mr. Altmann's and Mr. Darby's mind.

JUDGE BOTT: Tell me what it is, as an offer of proof.

MS. BRADEN: I would like to make an offer of proof that if Mr. Darby were permitted to testify that as a result of the charge having been amended he was unable to conduct further investigation in this matter; that he felt he was unable to interview the pharmacists any further or to take any affidavits from them in preparation for further defense of this action.

JUDGE BOTT: Did he learn that from Mr. McHugh? I'll reverse my ruling and permit you to inquire as to how he came to this.

MR. HOPSON: Your Honor, we would be glad to stipulate that no further interviews took place, but as to why or how or anything else, that is an argument. That is a legal argument they are attempting to elicit from the witness.

JUDGE BOTT: Counsel was not here yesterday and can't get the entire flavor of the hearing. IT is clear from the record that no further interviews took place. As to whether or not Mr. Darby felt inhibited by the ruling of the Board is irrelevant. If the ruling was improper, then regardless of how he felt, it wouldn't make any difference. I'll sustain the objection.

MS. BRADEN: I would like to be permitted to ask Mr. Darby if, as a result of the amendment to the Board, he did not conduct any further interviews.

JUDGE BOTT: He did not at that time. Do you want a causation in the case?

MR. LEWIS: Yes.

MR. LECHNER: Objection, Your Honor. Then you get to theopinion ofthe witness as to why he took the particular action.

MS. BRADEN: I do not intend to ask him about his opinion.

MR. HOPSON: We are willing to stipulate that no further interviews took place after May 21st and we are willing to stipulate that as far as we are concerned, but we don't want to go any further than that.

JUDGE BOTT: I don't know where we are going.

MR. LECHNER: Your Honor, might I inquire here? It is not my understanding that this proceeding at this stage or at any other stage at the trial would delve into the mental attitudes of the Jackson firm as to why they took or did not take any particular legal action or took any action at all in defense of the charge in the complaint or on behalf of their client. I just can't understand why their mental processes should become part of this record.

MS. BRADEN: Your Honor, I believe part of the purpose of asking Mr. Darby this question is in an attempt to sustain an affirmative defense which we have raised in this case in that the amendment of the charge, alleging that the interrogation or the alleged interrogation was an unfair labor

practice,in fact deprived our client of his right to due process since in fact a direct result of the amendment was the inability of Mr. Darby, on behalf of the client, to further investigate this matter and to further conduct interviews with these pharmacists. That is the reason I would like to have these answers in the record. I do not feel that it is irrelevant.

MR. HOPSON: Your Honor, this is the same thing that counsel for Respondent objected to yesterday with regards to my delving into the impact these interrogations had on the pharmacists themselves. It seems to me, it is the same thing.

JUDGE BOTT: I understand your position, counsel, very well now and I am sustaining the objection. I think your record is made, whether he felt inhibited or didn't feel inhibited. The ruling was made and they stopped the interviews. You say this deprived your client of due process because it didn't permit adequate representation by counsel. You can make that argument in your brief and to the courts, if necessary; if necessary, Mr. Lewis.

MS. BRADEN: Thank you.

Q (By Ms. Braden) Since the complaint was issued in this matter and up to the present date, Mr. Darby, have you or anyone else from the law firm of Jackson, Lewis further interviewed any pharmacists to prepare the defense for this charge?

A No, we have not.

Q Mr. Darby, did you ever have occasion to have a phone conversation with MR. Lechner?

A Yes, I did.

Q Could you please tell us when this was?

A It was in the beginning. I can go backwards. Friday, May 20th, there was an original meeting date set up between Mr. Lewis and Mr. Lechner. Earlier that week, Mr. Lewis asked me to call Mr. Lechner to ascertain whether or not the meeting could be changed from Friday, May 20th,to-- I am sorry: April 20th-- to Thursday, April 19th. I called Mr. Altmann and checked with Mr. McHugh and Mr. Lechner said it was all right and then I advised them also that it was all right. That is the conversation I had.

MR. HOPSON: I would object to the conversation he had with Mr. Lechner, if it is to impeach the testimony of Mr. Lechner, because I don't think a foundation was laid during cross-examination of witness Lechner.

JUDGE BOTT: Objection overruled.

Q (By Ms. Braden) Mr. Darby, I would like to direct your attention to the question on the questionnaire form which you used to interview the pharmacists. I believe you stated that the pharmacy wished to prepare a defense to this charge?

A That's right.

Q Would you please state why you asked what the name of the

pharmacist was?

MR. LECHNER: Objection, Your Honor. I don't think we should be getting into question on the reasons behind the questions at this stage. The question has been asked and answered as to what the purpose of the poll was and he has answered several times.

JUDGE BOTT: Objection sustained.

Q (By Ms. Braden) Could you please state how the question, how long the person was employed by the pharmacy, was relevant to your defense?

JUDGE BOTT: Are you going to go through all these questions?

MS. BRADEN: Yes, Your Honor.

JUDGE BOTT: You will get the same ruling.

MR. LEWIS: May we respond to that?

JUDGE BOTT: I don't think it is necessary why he asked each question.

MR. LEWIS: May I interject, Your Honor?

JUDGE BOTT: Again?

MS. BRADEN: Please?

JUDGE BOTT: I indicated to you earlier and you agreed that only one counsel would handle the examination of the witness,the making of objections and so on. You agreed and I see nothing that has occurred since that should make me change my ruling. I think counsel at your side is just as

competent and presumptively so as anyone who has been representing you in this case. We will have one counsel to handle the examination.

MS. BRADEN: Your Honor, it is part of General Counsel's contention that each and every question on the questionnaire is improper. I wouldlike the opportunity to establish that each and every question on the questionnaire is not improper. For that purpose, I would like to question Mr. Darby as to how the questions were relevant to the defense.

MR. HOPSON: Your Honor, that is a legal argument and they can make it in their brief. It is not a fact. How can legal relevancy or legality of something be a fact?

JUDGE BOTT: For example, Ms. Braden, would Mr. Darby have known whether the employees were paying dues in April 1973? Would he have any independent knowledge when he asked that question?

MS. BRADEN: No.

JUDGE BOTT: He couldn't have. I hope he couldn't. I assume he couldn't have. He wouldn't have known about assessments. He wouldn't have known about the Guild holding regular meetings. He wouldn't have known about all these things, but if he had gotten answers to these questions which in his view he considered favorable to the Respondent's position, to be a favorable fact which would make out his defense, then the answer to the question about "Why did you

ask it" has got to be that he thought that the answer, if favorable, would be a defense.

MR.HOPSON: And that is a legal argument, it would seem.

JUDGE BOTT: I am going to test this. I will go through six of them. Any six you want.

MS. BRADEN: You may choose any ones you wish.

JUDGE BOTT: No, counsel. You are examining. You choose them.

THE WITNESS: May I see a copy of the form,please.

JUDGE BOTT: I should think by this time you would have a picture of it.

THE WITNESS: May I see a copy of this, please?

MS. BRADEN: With Your Honor's permission, I will ask six questions regarding the questions on thequestionnaire.

JUDGE BOTT: Pick a half a dozen or more and ask him:. "Why did you ask that question?"

Q (By Ms. Braden) Did you participate in the preparation of this?

A Yes, I did.

JUDGE BOTT: Don't you have an answer that he did?

MS. BRADEN: No, he did not.

JUDGE BOTT: You and Mr. Darby. Perhaps you might take the stand next and be asked why you asked certain of those question, why you put them in, what was your view as to their relevance. Let's take it one lawyer at a time.

Q (By Ms. Braden) Mr. Darby, would you state about the question, How long was the person employed at the pharmacy, was relevant to the defense of the lack of majority support?
A Because the date in issue was April 19, 1973. If pharmacists were employed, naturally, after April 19, 1973, any of the questions which would be posed thereafter would have no relevancy to the issue of whether or not on April 19, 1973, the Guild did in fact represent a majority.
Q Would you please tell us how the question, If the pharmacist was a member of the Guild at the time, was relative to the defense of a lack of majority support?
A This naturally goes to the whole issue of the majority, as to whether or not they did represent a majority in fact on April 19th.
Q Would you please state how the question, Did the pharmacists actively support the Guild, was relative to the defense of the lack of majority support?
A Under the contract there was not a union security clause so therefore there could be and probably are pharmacists that work in the Guild in the pharmacy who were not Guild members, but nevertheless, on April 19th, felt strongly for the Guild, even though they were not a member. In that instance, I would have said that this person therefore was probably or did actively support the Guild and that would go to the issue of the majority in fact on the19th of April.

Without asking them that question, it would have been irrelevant to the whole system of questions.

Q Would you please state how the question, When the pharmacists became a member of the Guild, was relevant to the defense of a lack of majority support?

A This again goes back to the critical date of the 19th of April. If a pharmacist wasn't employed prior to the 19th of April and became a member of the Guild subsequent to the 19th of April then that in turn would affect the whole majority in fact issue on the 19th of April. So the pharmacists would have to be, in my mind, a member of the Guild on the 19th of April in regard to that issue.

Q Please state how the question, What the pharmacist did to become a member, was relevant to the defense of the lack of majority support?

A The reason for this question was because there might have been a pharmacist who said to me, "Yes, I am a member of the Guild" and then said, "Well, I didn't do anything to become a member" or, in the alternative, which would even be more substantial, would be a pharmacist saying, "I am not a member of the Guild", but then saying, "I signed a membership card." In my mind I was able to weight the responses which were given to me as to the issue for a defense to the majority in fact question on April 19th. This all related to this so that I could in my own mind try to place the defense to those

charges.

Q Would you please state how the question of whether the pharmacists were paying monthly dues was relevant to the defense of the lack of majority support?

A To take it back again to the question of, Are you a member, or, Do you support the Guild, if he is a member of theGuild and he is paying dues, that is further indication of it, but if an employee says "I am not a member of the Guild" and "I don't actively support the Guild" and yet nevertheless says to me, "I am paying dues to the Guild", again I would have felt that this person is on the support for the Guild and then,on the 19th of April, in essence affect the majority status of the Guild on that date.

JUDGE BOTT: Ms. Braden, that is enough. That gives me a sampling, although you sort of went down the first page only. I will very much be interested in and welcome anything you want to say in your brief from a legal point of view as to the justifiability of these questions.

MR. HOPSON: For the record, I would like to move that the responses to the six or seven previous questions be struck if in fact it is contended that this is evidence rather than argument because I think if it is evidence we might be called upon to rebut it. I would move to strike it.

JUDGE BOTT: It is his position as to why he thinks those questions, if answered in a certain way, would bear on his

legal defense.

MR. HOPSON: We will have plenty of reasons in our brief. I just want to make it clear that in our view we are not under any obligation to put an attorney on the stand and give our legal arguments at this point.

JUDGE BOTT: You will give your legal arguments in your brief.

MS. BRADEN: I have no further questions.

MR. HOPSON: We have no questions.

JUDGE BOTT: I have one. You came to Washington and saw Mr. Altmann in anticipation of the filing of a charge or perhaps the charge had been filed or you knew it was going to be filed. You told him that you were going to prepare a defense and you were going to interview some people.

THE WITNESS: The charge was filed on the 17th, when he called me.

JUDGE BOTT: Now, you came down to see him?

THE WITNESS: I came down on the 18th.

JUDGE BOTT: You told him what you wanted to do: you wanted a room and so on. What was the date of this again when you spoke to Altmann?

THE WITNESS: Mr. Altmann called me on the 17th of May to say that he had received a charge from the Labor Board. Then I came down on Friday the 18th of May in order to try and work out the possibilities of interviewing the pharmacists,

which I did on the 21st.

JUDGE BOTT: But the mechanics of how you were going to do it--

THE WITNESS: Were done on Friday, the 18th.

JUDGE BOTT: And you flew in on the 20th again?

THE WITNESS: I flew in on Sunday night, the 20th, so I could start interviewing at 7:30 on the morning of May 21st.

JUDGE BOTT: On the 21st again, 7:30 in the morning, did you see Mr. Altmann before you started your interviews?

THE WITNESS: I went into his office, yes.

JUDGE BOTT: On the 18th, did Mr. Altmann ask you whether it would be proper for him to advise the Union with respect to saying that you were going to interview all these people?

THE WITNESS: No.

JUDGE BOTT: Did you think of it as a possibility, of advising the Union, advising counsel for the Union that you were going to?

THE WITNESS: No. This was in preparation of a defense and I assumed and I still feel that it was my right to interview these people without notifying counsel or the Guild.

JUDGE BOTT: That is all I have. You are excused.

(The witness was excused.)

We will take a five minutes recess at this point.

(Whereupon, a short recess was taken.)

JUDGE BOTT: Back on the record.

MR. LECHNER: Your Honor, if I may, I would like to state that I have negotiations in another unit involving this same Charging Party that have long been scheduled and I must leave at this time. I would like to preserve my rights to enter the appropriate briefs after the hearing.

JUDGE BOTT: You certainly may. You are excused.

To help you plan your schedules, we will go to approximately a quarter to one, like we did yesterday.

MR. DARBY: I would like to call as our next witness Ms. Peggy Braden.

Whereupon,

PEGGY LEE BRADEN

was called as a witness, by and on behalf of the Respondent, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Darby) Ms. Braden, would you state your name for the record?

A Peggy Lee Braden.

Q By whom are you employed?

A Jackson, Lewis, Schnitzler & Krupman.

Q Is that the firm which is counsel for the Retired Persons Pharmacy?

A Yes, it is.

Q In what capacity are you employed by the firm?

A I am an associate with the firm.

Q How long have you been associated with the firm?

A Since June of 1971.

Q Do you have any familiarity with or do you know personally the Retired Persons Pharmacy?

A Yes, I do.

Q When was the first time that you became involved in the pharmacy or with the pharmacy?

A I don't recall the exact date, but I was present with Mr. Lewis during the negotiation of this agreement which recently expired. I attended all the negotiating sessions except probably the last two or three.

Q I would like to direct your attention to April of this year, 1973, or rather a little earlier than that. Were you advised by anyone in the firm concerning anything as to notification from anyone that concerned the Guild and its contract reopening?

A Yes. Mr. Lewis showed me a letter you had received from Mr. Lechner with reference to reopening the contract and beginning negotiations again. I think it was around March 17th actually that I saw this letter.

Q Do you know if ameeting was eventually set up between Mr. Lewis and Mr. Lechner?

A Yes, there was a meeting arranged.

Q Do you know the date of the meeting?
A The meeting was April 19, 1973.
Q Were you in attendance at the meeting?
A Yes, I was.
Q Where was the meeting held?
A The meeting with Mr. Lechner was held partially in his office and partially in a restaurant in Georgetown.
Q What time did that meeting commence?
A Some time between 12 and 12:30.
Q Did you fly to Washington earlier that morning, on the 19th?
A Yes, we did.
Q That was with Mr. Lewis?
A Yes.
Q Did you meet with anyone in the morning of the 19th?
A We had a meeting with Mr. Altmann and Mr. McHugh in Mr. Altmann's office. I guess it was about 8:30 in the morning.
Q Do you recall what the purpose of that meeting was?
A There were a number of purposes. Mr. Lewis wanted to meet Mr. McHugh, for one thing. They had never met. They wanted to discuss the contract, to discuss possible ideas we had about renegotiating the contract and we discussed with Mr. Altmann this contention that he had made that the Guild did not have the majority support of the pharmacists.

Q Did Mr. Lewis respond to anything to state to Mr. Altmann anything in regards to his comment that he did not believe that the Guild represented the pharmacists?

MR. HOPSON: I object to what Mr. Lewis said.

Q (By Mr. Darby) You indicated that Mr. Altmann said to Mr. Lewis that he, Mr. Altmann, did not believe that the pharmacists or that the Guild represented the pharmacists any more. Did MR. Lewis say anything to Mr. Altmann in responding to that statement?

A Yes.

Q What?

A Mr. Lewis discussed with Mr. Altmann the possibility that if Mr. Altmann felt that the Guild did not have the support of the majority of the pharmacists, it would be possible for the pharmacy to request an election by a petition to the Board. We discussed what this would mean and the process that you would go through in order to file such a petition.

Q Was anyone called in to that meeting at the latter part of it, anyone else, as to attending the meeting?

A During the meeting, when we were discussing it with Mr. Altmann, this whole problem about whether or not the pharmacists really did support the Guild, Mr. Altmann referred to the fact that Mr. Brault had had a number of conversations with the pharmacists. Mr. Altmann had had a

number of conversations with him. Mr. Lewis wanted to speak to Mr. Brault personally about his own knowledge of this matter. We asked Mr. Brault to come and join this meeting, towards the end of it.

Q Did Mr. Brault attend the meeting?

A Yes, he did.

Q What happened when Mr. Brault attended the meeting? What was said?

A When Mr. Brault came down we briefly reviewed for him what we had discussed before he came about the possibility that the Guild did not have the support of all the pharmacists and Mr. Brault had with him a list that contained the names of pharmacists on it, which he said he had made up based upon his conversations with them, indicating whether or not they supported the Guild or did not support the Guild.

Q Was any decision made as to what was going to be done?

A After we had this discussion finally it was decided that the Employer, the pharmacy, would file a petition with the Board requesting an election.

Q Did you eventually go and meet with Mr. Lechner?

A Yes. We had already had this appointment with him. When we finished our discussion with the people at the pharmacy, we then left and went to meet with Mr. Lechner.

Q Did you have any conversations with Mr. Lewis on the

way to meeting with Mr. Lechner?

A Yes. We stopped for a few minutes and he gave me some stuff to bring back to the office and I asked him about filing the petition. I inquired why we weren't going to wait until the contract expired to file the petition because the contract was still in effect. He said he really couldn't do that because that would be very misleading to Mr. Lechner. It would give him the impression we were willing to negotiate and then when the contract expired we would file a petition. It wasn't proper to do such a thing.

MR. HOPSON: Your Honor, I am going to object to the last testimony and move that it be stricken. I don't see that it has any relevance whatsoever to anything in this proceeding.

JUDGE BOTT: What does it relate to?

MR. DARBY: I think there is an indication here that th e petition was filed and was eventually dismissed by the Board. I think it is very relevant that the testimony that this witness gave as to the reason why the petition was filed, then at that period of time rather than holding it until the time when the contract expired.

JUDGE BOTT: You mean, if you held until after the contract expired, it would have been timely?

MR. DARBY: Under the cases, there is a waiver if the parties had entered into negotiations, Your Honor. There are some cases which hold that by doing so the parties have

waived their right to contest the issue of majority status after the contract expired. So, from what Mr. Lewis said to Ms. Braden, it indicates to me the intention to file the petition then rather than entering into negotiations and then contesting or raising the question of the issue of majority status after the contract has expired, when then and there may have been, under certain cases, a waiver of the right of the company to even contest the issue of majority status.

JUDGE BOTT: I don't know whether that is true or not, but I'll let the record stand.

Q] (By Mr. Darby) Did you eventually see Mr. Lechner?

A Yes.

Q Would you tell us what happened when you got in to Mr. Lechner's office? What was said and what occurred?

A I went in to Mr. Lechner's office while Mr. Lewis parked the car and we visited: "Hello", "How are you" and that kind of thing. Then Mr. Lewis came in and they visited and then Mr. Lechner said "Let's go to lunch." So we started walking towards this restaurant in Georgetown.

JUDGE BOTT: Could you keep it to the bone. I understand from other witnesses, you went to lunch, you had a lovely lunch, you didn't talk business during lunch and after lunch somebody said, "Now that lunch is over..." and then you started talking labor relations. Is this true?

THE WITNESS: No, that's not exactly what happened.

JUDGE BOTT: You talked abou the case during lunch?

THE WITNESS: Yes. That's all we talked about.

Q (By Mr. Darby) Did you have a conversation or was there a conversation with Mr. Lechner on the way to lunch?

A Yes. He was talking about the Guild and the pharmacy on the way to lunch. Mr. Lechner kept sayin g how terrific this contract turned out to be for the employer and the employees and the employees were reporting to him that Mr. Altmann was so much like a changed man. They were the words Mr. Lechner used. Mr. Lechner kept saying, this is our contract. It is such a good example of what union agreements can do for employee relations. We just said, "Oh."

JUDGE BOTT: Who said "Oh"?

THE WITNESS: Maybe Mr. Lewis or I did. It wasn't a statement that invited a remark. Then we started lunch. For a few minutes during lunch we talked about politics, what was happening in Washington, and then Mr. Lechner said, "What are we going to do about getting together. When are we going to get together?"

Mr. Lewis said, "The Employer is going to file a petition for an election. Mr. Altmann does not feel that the Guild enjoys the support of the majority of the pharmacists." Mr. Lechner just said, "You must be crazy. You can't be serious." He was very surprised. He said, "I don't see how

you can say that. The unit is the same and the people are the same. I don't see how you can do that." Then he said, "Well, anyway, we have an election. There shouldn't be any problem about the unit. We should be able to have the election and get it all over with right away."

Bob said, "Let's keep eating our lunch. Let's finish our lunch." Mr. Lechner said, "Yes. Right." Then he started saying, "You know, the Guild is just going to think that this is like declaring war. They're just going to be very upset about this. Frankly, we can just organize all the rest of your employees in about 24 hours. We can get the Retail Clerks or the Communications Workers. Whether or notthe Guild will help organize those employees depends on how the pharmacy's attitude is towards the Guild." He kept talking and explaining why he didn't think we should file the petition.

By that time we were mostly finished eating and Mr. Lechner kept saying,"I think you should discuss it again with the pharmacy before you file the petition." We had thought we would file the petition right after lunch. Mr. Lechner kept saying, "You should discuss it again." So Bob said, "All right. As soon as lunch is over, we'll go back to the pharmacy, to Mr. Altmann, and we will talk about it and we will call you this afternoon." That was pretty much what happened. Then we had desert and we left.

Q Did Mr. Lechner ever ask Mr. Lewis during lunch for evidence that the Guild didn't represent a majority?

A No. He kept saying how the whole matter, the whole election, should be over relatively soon.

JUDGE BOTT: The whole election?

THE WITNESS: The whole election matter should be soon over. With the election, the Guild would win and it would be over.

Q (By Mr. Darby) Did Mr. Lewis ever say, now that lunch was over he had to tell him, meaning Mr. Lechner, that the Employer would refuse to bargain?

A There wasn't any discussion about a refusal to bargain. The whole discussion was about filing a petition and whether or not we should do it.

Q Did Mr. Lewis and you, after lunch was over, go back to the pharmacy?

A Yes.

Q What happened when you went back to the pharmacy? Who did you meet?

A Mr. Altmann was there and I believe Mr. Brault was there. We basically told them about our conversation with Mr. Lechner and Bob reviewed with Mr. Altmann again the process of filing a petition,what would possibly happen, whether or not Mr. Lechner had filed a charge of refusal to bargain and the petition would be stopped, and he reviewed

with him whether or not the Board might take the petition since they were in what we called the "insulated period" and he explained to Mr. Altmann what that meant. The Board might not take the petition or they might hold it until the contract expired if Mr. Lechner didn't have any objection. We stated our opinion that, based on our opinion of our conversation with Mr. Lechner, he probably wouldn't have any objection to the election because that was what the whole lunch was about. So Mr. Altmann said, "I haven't changed my mind. I still think you should file the petition.

So I called up Mr. Lechner and said, "This is Peggy Braden. We have discussed the matter with Mr. Altmann and we haven't changed our mind. I am going to go and file the petition." He said, "All right" and he hung up. Shortly after that, I left and I filed the petition.

Q Did you ever say to Mr. Lechner over the phone that the employer refused to reconsider its decision and refuses to meet and bargain,in those words?

A No. I don't even talk like that. We talked about, that he hadn't changed his mind.

Q You then went and filed the petition; is that correct?

A That's right.

Q Did you ever hear from Mr. Lechner again after the petition had been filed by you, did you ever have a conversation with him again?

Q Do you recall when that conversation occurred?
A It must have been around May 7th. He called me and he said he had gotten notice that the petition was dismissed. He said, "The petition has been dismissed. Now when are we going to get together and start negotiating?" I told him that I knew it had been dismissed. I had talked to Bob about it. We still don't feel that the Guild represented a majority and we were not willing to negotiate with him. He said, "Okay. I am going to file 8(a)(5) charges." So I said, "Okay." That was about it.
Q Did you advise anyone else of the converation you had with Mr. Lechner?
A Yes. After the conversation was over, I spoke to Mr. Lewis about it and told him what Mr. Lechner had said. He said, "Call Mr. Altmann and explain to him so that when he gets the charges he won't be surprised. So I called Mr. Altmann and told him what happened.
Q I show you General Counsel's No. 11(a),(b) and (c). Would you tell us if you were involved in drafting that up?
A Yes, I was.
Q Would you tell us what happened?
A After I had this conversation with Mr. Lechner about his filing the charges, Bob said to me, "As a part of our defense we will want to interview the employees." He gave me a file and he said,"Read over some of these cases and draft up some

questions and an attorney's statement about the purpose of the questions." So I did. Then he said I should show it to you. I drafted it and gave it to you and we redrafted it and redrafted again and then we gave it to Bob.

Q Is that the statement and the questions that you eventually used?

A Yes.

Q Do you recall the date on which you interviewed the employees?

A May 21st.

Q Do you remember approximately how many pharmacists you interviewed?

A I think I talked to about nine pharmacists and I talked to three or more people who were staff pharmacists.

Q Ms. Braden, why were the staff pharmacists interviewed?

A When we had this election originally--

MR. HOPSON: Your Honor, may I interpose.

JUDGE BOTT: Yes, sir.

MR. HOPSON: What do you mean by "staff pharmacists"?

MR. DARBY: The supervisors.

MR. HOPSON: The seven supervisors?

MR. DARBY: Supervisors are referred to by the pharmacy as "staff pharmacists."

Q (By Mr. Darby) Why did you interview the staff pharmacists?

A During the election these people were placed on the eligibility list and when they voted their votes were challenged. During the negotiations Mr. Lechner contended that they belonged in the unit and he said the Guild wanted to bargain for them. THat was not happened. We subsequently decided they were supervisors and did not belong in the unit, but because the whole matter seemed to be somewhat controversial, we weren't sure what their status was, we decided it would be advisable to interview them as well as to interview all the regular pharmacists. So that is what we did.

Q The staff pharmacists that were interviewed by yourself, myself and Mr. Giovannetti, did you prepare an introductory statement to the introductory statement?

A Yes.

JUDGE BOTT: May I make a suggestion? No one has raised any question about the interviewing of staff people. General Counsel hasn't and the Union hasn't. This is the first time we have heard about it. So why are you interjecting it into the case?

MR. DARBY: I withdraw it, Your HOnor.

Q (By Mr.Darby) Did you ask the pharmacists any questions in addition to the ones that were on that form?

A No.

Q Did any of the pharmacists refuse to speak to you?

A Yes, they did.

Q What did you do?

A I just said, "Nice meeting you. Thank you for coming. Goodbye."

Q Where did you interview the pharmacists?

A I was upstairs in a place they call the library.

Q Did any of the pharmacists you interviewed ask you what was going to be done with the forms?

A Yes.

Q What did you say?

A I told them that the forms were going to be used by me and that I was going to keep them.

Q What did you do with the completed questionnaires?

A I kept them and brought them back to the office and I put them in a file.

Q Did you ever show any of the completed questionnaires to anyone from the pharmacy?

A No.

Q Ms. Braden, did you ever have a conversation with Mr. Lechner concerning layoff of pharmacists?

A No.

Q Mr. LechNer testified yesterday, just to refresh your recollection, since you weren't here, that there were certain pharmacists who were laid off by the pharmacy and that he may have discussed these laying off of the pharmacists with

you as to whether the layoff was in accordance with seniority. Did you ever have a conversation similar to that with Mr. Lechner?

A No. I didn't know the pharmacists had been laid off until I came down on the 19th.

Q Mr. Lechner also testified yesterday that he may have had a conversation with you concerning the scheduling of employees or a change of some sort in the scheduling of the pharmacists. Do you recall if you ever had a conversation with Mr. Lechner on that?

A No, I didn't. I hardly ever had conversations with him.

Q How many conversations do you think you had with Mr. Lechner?

A Maybe three in the whole year.

MR. DARBY: I have no other questions, Your Honor.

JUDGE BOTT: Mr. Hopson?

MR. HOPSON: I may have a couple here.

CROSS-EXAMINATION

Q (By Mr. Hopson) Ms. Braden, isn't it a fact that the April 19th meeting, which you had with Mr. Lechner, at that timehe was in fact opposed to the filing of a petition by the Employer?

A I don't know if I would characterize his response as "opposed". He was surprised.

Q Didn't you testify that he was telling you reasons why

you shouldn't file a petition?
A He kept telling us why he thought it was inadvisable, but he didn't really say "Don't do it."
Q Hadn't he at that meeting requested a time and place to meet with you to bargain?
A No.
Q That didn't come up in the conversation at all?
A No. The whole conversation was about the petition, whether or not we should file it, whether or not he could organize the employees.
Q How did this filing of the petition come up? Who brought it up?
A I don't understand what you mean.
Q Well, how did it come about in the conversation? You were talking politics in Washington. All of a sudden somebody says they are going to file a petition? How did it come up?
A We were talking about politics and things and Mr. Lechner said, "What are we going to do about this reopening the contract? What do you want to do?" Mr. Lewis said, "The Employer is going to file the petition for an election. Mr. Altmann doesn't think that the Guild represents a majority of the pharmacists." Mr. Lechner said, "What?" He was very surprised.
Q The purpose of that meeting was to establish some meeting

dates, wasn't it? Wasn't that the reason Mr. Lechner was trying to meet with you that day?

A The purpose was to discuss the opening of the contract. That's what Mr. Lechner's letter said.

Q In Mr. Lechner's letter of March 7th, which is in the record in this case, he says, "Please get in touch with me for the purpose of setting up a mutually acceptable time and place for negotiations." This didn't come up at all on April 19th? This was never mentioned?

A Not after Mr. Lechner's first remark, "What are we going to do about this contract?"

Q Didn't you know that the purpose of the meeting was to discuss setting up negotiations?

A I knew what Mr. Lechner's letter said and I knew what Mr. Lewis' letter said. I knew that I was invited to attend the meeting.

Q So you knew what he meant by-- What was it he meant by-- What was it you said now? What--

MR. DARBY: May we have a question?

Q (By Mr. Hopson) What did Mr. Lechner say when you said you got around to talking about the petition?

A He said something like, "What are we going to do about this? What are we going to do about getting together?"

Q You said on May 21, 1973, during your questioning of the pharmacists, that some of them refused to answer. Do you

know how many refused?

A Not offhand, I don't; three or four; maybe five.

MR. DARBY: Your Honor, just to note for the record, in one of the first stipulations posed by the Board there was an indication as to how many pharmacists were interviewed and the number that responded to us.

JUDGE BOTT: We would like to get this witness' testimony, not the stipulation.

MR. HOPSON: That is all I have, Your Honor.

JUDGE BOTT: Anything else?

MR. DARBY: No further questions of this witness.

JUDGE BOTT: You are excused.

(The witness was excused.)

MR. DARBY: I would like to call Mr. Lewis to the stand, please.

Whereupon,

ROBERT LEWIS

was recalled as a witness, by and on behalf of the Respondent, and having been previously sworn, wa s examined and testified as follows:

JUDGE BOTT: Mr. Lewis, you were previously sworn. You are still under oath.

DIRECT EXAMINATION

Q (By Mr. Darby) Mr. Lewis, are you a member of the firm of Jackson, Lewis, Schnitzler & Krupman?

A I am.

Q Are you a partner in the firm?

A I am.

Q Are you familiar with the Retired Persons Pharmacy located in Washington, D.C.?

A I am.

Q How are you familiar with the pharmacy?

A Our firm is counsel to the corporation.

Q Do you know the Metropolitan Guild of Pharmacists, if they ever filed a refusal to bargain against the pharmacy?

A Yes, they did.

Q Is this a copy of the charge, the first one that you saw?

A That is correct.

Q I am showing you General Counsel's Exhibit 1(a), I believe.

A That is correct.

Q Do you know or were you aware, prior to being notified that this charge was filed, that the Guild was intending to file charges?

A Yes. On May 7th, which is also the date on which this charge was executed, Ms. Braden advised me that Mr. Lechner had advised her that he was intending to file charges of refusal to bargain.

Q Did you discuss that with anyone else in your firm?

A Yes. I discussed it with you and I asked you to do some research and prepare a statement, an introductory statement for interviewing employees and to prepare questions and answers.

Q Do you know if this was done by me and Ms. Braden?

A Yes, it was done and it was submitted to me. I reviewed the questions. I eliminated two questions because I considered that they might be interpreted to be without the scope of the issues of the charge. I submitted the balance of the questions back to you and told you to prepare them in final form.

Q Mr. Lewis, there has been some correspondence submitted previously into evidence concerning the arrangement of a meeting between you and Mr. Lechner for Friday, April 20th. Are you familiar with the correspondence?

A Yes, I am.

Q Did you ever have any phone conversations with Mr. Lechner concerning the meeting date?

A No, I never did.

Q Was the meeting all arranged through the correspondence which has been introduced in evidence?

A Yes, it was.

Q Did you ever tell Mr. Lechner at any time during the attempt to set up this meeting that was eventually held on April 19th that you would not be able to meet before the

19th because of your busy schedule around then?

A No, I never said that or anything like it. I never had any phone conversations with him.

Q Had you had any phone conversations with Mr. Lechner even before the contract was in effect?

A Prior to the execution of the contract I had one or two conversations with Mr. Lechner while we were negotiating the contract. I am talking about phone conversations. After this contract was executed, my recollection is that I never spoke to him again until I met with him in his office for lunch.

Q On the 19th?

A On the 19th.

MR. DARBY: I have no further questions.

CROSS-EXAMINATION

Q (By Mr. Hopson) Mr. Lewis, I note on your letter of March 19th, which is Respondent's Exhibit 7(a), that you say "It was good hearing from you again." Are you positive you were referring to Mr. Lechner's letter rather than some phone conversation?

A I am positive.

Q I notice also the date of Respondent's 7(a) is marked March 19th and the date of Respondent's 7(b), which is Mr. Lechner's letter, is March 7th and presumably was mailed out on March 7th. Do you recall when you received Mr. Lechner's

letter?

A You will have to show me the letters. I request, if you would, ask me the questions again.

Q This is a copy of Respondent's 7(a) and (b). When did you receive Respondent's 7(b), which is Mr. Lechner's letter?

A It's possible that Mr. Darby might have the original and there might be a date stamp on it. May I ask Mr. Darby?

MR. DARBY: Your Honor, if this is permissible with you, I do have the original March 7th letter from Mr. Lecher to Mr. Lewis and I am pulling it now from a pile. There is a date stamp on the back of it of March 14, 1973.

MR. HOPSON: I am willing to stipulate it was received on March 14th.

Q (By Mr. Hopson) Did you see the letter on March 14th?

A I don't recall whether I was in the office that day. If you would like, I will check my diary to advise you.

Q Is there any reason you can think of for the delay between March 14th and March 19th in replying to the letter?

A Yes, I can think of a good reason. I usually am in the office about one day every week and there often times when there are three, four or sometimes five days between my responding to correspondences.

Q So you do have a busy schedule?

A I absolutely have a very busy schedule.

MR. HOPSON: That is all I have.

JUDGE BOTT: You are excused.

(The witness was excused.)

MR. LEWIS: Your Honor, at this time we would like to make a motion to dismiss. It is directed towards paragraph 8(b) of the Complaint. Respondent moves that paragraph 8(b) of the Complaint relating to the employee interviews conducted by attorneys of the firm of Jackson, Lewis, Schnitzler & Krupman be dismissed and we submit a brief memorandum of law in support of the motion.

JUDGE BOTT: Let me interrupt you. I do apologize, but why are you making this motion before you close your case?

MR. LEWIS: It is very important that we have a ruling on this motion to decide how to proceed from this point on, as I will explain in the motion, if I may.

JUDGE BOTT: I am not going to rule on the motion. I am going to direct you to put on your case, your whole case. I am not going to rule on part of this case. I want to make that crystal clear so there won't be any misunderstanding. I am not going to compartmentalize this proceeding. When you get ready to rest, you can make your motion. You made no motion at the end of the General Counsel's case. You may make your motion at the end of your case. I will reserve ruling on it now and pass upon it when I write my decision. I am not going to give you a decision now.

MR. LEWIS: May I finish my motion?

JUDGE BOTT: Yes.

MR. LEWIS: The evidence which has been introduced into the record, Your Honor, fully supports this motion. As established by the testimony of the witnesses, the interviewing of the pharmacists was not in violation of the Act. It was done for the sole purpose of preparing a defense to the regusal to bargain charges.

The interviews were totally voluntary on the part of the pharmacists. They were conducted with the utmost regard for their rights and undertaken only after exceedingly careful review of the law. Each question specifically related to our ability to adequately represent the Respondent in regard to the issue of its refusal to bargain. Moreover, the interview results were kept strictly confidential as attorney work-products and in no way affected the employment of any ofthe pharmacists.

It is evident that in conducting the interviews no one was acting as agent of the Respondent. The interviews were solely conducted for the purpose of fair and adequate representation of a client by its counsel. The interviews were conducted only for the benefit of counsel in order to aid and assist us in our obligation to fully and completely give our client the best representation possible.

General Counsel alleged in its Bill of Particulars that all the questions the associates of our firm asked were

unlawful. General Counsel has an unfair advantage, constituting a denial of due process when he can, and obviously has, interviewed employees for pretrial preparation, but Respondent's counsel cannot. Even worse, General Counsel states in his opposition to Respondent's motion that if we do interview the employees and ask the same questions, he will amend the Complaint to allege it was unlawful.

In Hickman v. Taylor, 329 U.S. 495 (1947), the Supreme Court stated: "In performing his various duties,...it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel. Proper preparation of a client's case demands that he assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference .... This work is reflected, of course, in interviews,..."

Your Honor, if you grant this motion, we may still have time, although very little, to interview our employee witnesses prior to calling them to the stand. I need not stress the importance of customary pre-testimony interviewing by counsel in trials. I call your attention to the further need in this situation where we have heard a highly unusual statement by counsel for the Charging Party that he advised the employees to respond untruthfully. This fact only underscores the importance of such pre-testimony interviewing

by us to ascertain whether the employee's answers that were given to us were truthful and whether and which employees we should call as witnesses.

Your Honor, here we are, at the point where we have the burden of going forward to rebut the Union's presumption of majority status arising from its certification. What are we to do? By our being inhibited from interviewing the employees even up to this time in the hearing, the Respondent has been denied due process. But, perhaps we may be able to oversome this handicap.

Your Honor, we ask you, we implore you, remove the shackles, free us so that we may perform our professional responsibilities to our client. Thank you.

JUDGE BOTT: I am glad to hear from you, Mr. Lewis.

MR. HOPSON: Your HOnor, I might only note one point since I will respond in my brief to the rest of it. As the evidence indicates, counsel for Respondent have in fact interviewed as best they can everybody in the unit. So I can't possibly see, unless they have another questionnaire prepared, that it goes even further, how they could glean any more information than they already have.

MR. DARBY: Your Honor, Ms. Braden attempted to ask me questions as to the reasons why I was so concerned and why Mr. Lewis has raised this motion now. We interviewed employees on the 21st of May. I have never, ever been able

to speak to those people again. I have worked with the administrative people, the supervisory people, at this pharmacy and they have related to me conversations that they had with employees or pharmacists there. I have never been able to speak to any of these pharmacists to find out at least when the conversations occurred, the approximate dates of the conversations, to get their best recollections in it as well.

You can even judge, I think yourself, as to the testimony from Mr. Paul Brault, and I am sure that counsel for the General Counsel's opinion is that his recollection was faulty. Nobody asked him to keep records of this and yet I can't even talk to the people that he said he had these conversations with.

JUDGE BOTT: Let's get back to the central issue at this point. Does Respondent have any more evidence to present at this time?

MR. DARBY: I believe we intend to call all the pharmacists as witnesses in this trial.

JUDGE BOTT: That is fine. What time are you read to start?

MR. DARBY: We will be ready to start after lunch. We would like to know whether you would get a ruling on a motion to dismiss today.

JUDGE BOTT: I am going to reserve ruling until the end

of your case. My inclination would be to deny the motion. I would give you that, in fairness to you. My usual procedure would be to rule on the motion at the end, when I shall issue my decision. That is what I will do officially. I am not granting your motion; that's for sure. That is clear. Since you have not finished your case, we will take a recess. Be back here at 2 o'clock and we will see what testimony you have. I have all the time in the world. There are only 35 people in the unit.

MR. DARBY: 28 people.

JUDGE BOTT: The hearing won't last really very long, with 7 or 8 an hour, I imagine. Before you call them, however, when we reopen the hearing, I would ask you to give me an idea of the nature of your questions.

Off the record.

(Whereupon, at 12:45 p.m., the hearing adjourned, to reconvene at 1:45 p.m., the same day.)

AFTERNOON SESSION

1:45 p.m.

JUDGE BOTT: The hearing will be in order.

You may proceed, Mr. Darby.

MR. DARBY: Your Honor, I would like at this point to return to the Reporter the original copy of the subpoena.

JUDGE BOTT: We left a number for that: Respondent's No. 12. That is admitted into evidence.

(The document, heretofore to be marked Respondent's Exhibit No. 12, was marked and received in evidence.)

MR. DARBY: If I may, Your Honor, at this time I will suggest to complete the record in regard to the General Counsel's Exhibit No. 1. There was one other letter which I would like marked as Respondent's Exhibit NO. 13. We did receive a telegraphic denial which was read to us by phone and dictated to one of our secretaries. I do have a copy of that, which I think I would like to have made part of the record.

JUDGE BOTT: That certainly ought to be made a part of the record and I don't see any objection to it.

(The above documents were marked Respondent's Exhibits 13 and 14 for identification.)

MR. DARBY: I would move Respondent's 13 and 14 into evidence.

MR. HOPSON: No objection.

JUDGE BOTT: They are admitted.

(The documents, heretofore marked Respondent's Exhibits 13 and 14 for identification, were received in evidence.)

MR. DARBY: Your Honor, we were requested to state the reason for the calling of the pharmacists for the record, prior to our adjourning for lunch. We intend to call the pharmacists in partial defense of the allegation in the Complaint relating to Respondent's refusal to bargain on April 19, 1973; in regard to the fact that on April 19, 1973, the Union did not in fact represent a majority of the pharmacists in the unit.

I would also like to make note for the record at this time that we are calling these witnesses prior to your ruling on the motion made by Mr. Lewis prior to lunch and without ever having discussed with them or spoken to these witnesses since May 21, 1973 and in the light of prior testimony concerning the fact that certain people were advised to lie in their intitial interviews by myself and the two other associates from my firm. It is difficult for us to ascertain, even at this time when calling them, whether in fact what was ever said to us was in fact true.

I would like to call my first witness.

MR. HOPSON: Your Honor, I might state an objection to

any attempt by Respondent to elicit from any of the unit employees whether they are members of the Guild or whether they support the Guild.

JUDGE BOTT: At this point?

MR. HOPSON: At this point of time.

JUDGE BOTT: Just as long as we can get right to the point, I also asked you to indicate or to think about indicating, Mr. Darby, the nature of the examination you are going to conduct. You haven't done that, as you have just called a witness, but General Counsel opens up that area by saying that he will make an anticipatory objection right now to any interrogation about their present sentiments. I would sustain such an objection. I will limit your testimony with respect to their sentiments. I will not limit your testimony in other areas. I will make those rulings as we go along.

MR. DARBY: I do not understand what you mean by "limit your testimony".

JUDGE BOTT: I will limit their testimony in time. For instance, I would not, as General Counsel indicated in his anticipatory objection, permit you to ask a person right now "Are you a member of the Union now" or "Do you support the Union."

MR. DARBY: I do not intend to ask them as to this point of time.

JUDGE BOTT: I will not permit you to ask him whether

he was a member of the Union as of April 19th, 18th or 17th.

MR. HOPSON: I might state, as further grounds for that, although you have already indicated what your ruling would be, the fact that this is a poll and it is part of what we consider to be wrong with the interrogation that occurred on May 21st.

MR. DARBY: Your Honor, the cases state that in defense of this type of a charge, we as counsel for Respondent have the right to offer into evidence, number one, the company had objective considerations on the date of the refusal, or two, that the Union did not in fact represent a majority of the employees.

Obviously, in regard to the second part of the defense, it is necessary for us to ask these employees whether or not on the 19th of April they were indeed members of the Guild or indeed supported the Guild. If it is--

JUDGE BOTT: How about taking one at a time? As members of the Guild on the 19th?

MR. DARBY: That is correct, sir.

JUDGE BOTT: Would you object to that?

MR. HOPSON: Yes, Your Honor.

JUDGE BOTT: Whether or not they supported it?

MR. HOPSON: Yes, I would.

JUDGE BOTT: I will sustain the objection. To help you in preparing your examination, I am indicating to you what my

rulings will be, in advance. You indicated to me that you are going to call a substantial number of people.

MR. DARBY: Just to make the record clear, Your Honor, would that be the ruling with regards to the posing of these questions to each and every one of the employees that we have indicated we would be calling this afternoon?

JUDGE BOTT: By and large. I will tell you what I will permit. I will permit you to ask any employee whether, in the unit, he made any communication to the people that you had as your witnesses, Mr. Brault or Mr. Altmann for example, prior to the withdrawal of recognition, with respect to his sentiments regarding the Union. In other words, it is classical corroboration. Mr. Brault testified that Mr. Smith or Mr. Jones told me that she had no use for the union, she wanted no part of it, I would certainly permit those witnesses to testify that they so told Mr. Brault or Mr. Altmann. That I will permit. But to ask a witness, without any other information about "How did you feel about the Union prior to April 19th?", "Did you want the Union to represent you then", an uncommunicated state of mind, I would not permit that question. I would sustain objections to all those questions.

MR. DARBY: I do take exception to that ruling. In view of that, we are not going to be calling any of these pharmacists this afternoon. Additionally, I think you are placing me in a tremendous burden to anticipate that because of Genera

Counsel's charge in this matter, that I am going to have to call witnesses again to testify to areas concerning something that I have never spoken to them about. Additionally, I would like to make an offer of proof: that if these people were called, the majority of the employees would indicate and would testify, would state under oath, that on the 19th of April they did not support the Union and they were not members of the Union.

JUDGE BOTT: If that was all their testimony contained then I would reject that offer of proof, as I have indicated.

MR. DARBY: We rest our case, Your Honor.

MR. HOPSON: We have no rebuttal, Your Honor.

JUDGE BOTT: I want to stress for the record, although I think my ruling is clear, that I would have permitted corroboration of any of the witnesses you have already put on who would testify in the area of the company's objective good faith based upon objective standards. I would have permitted any employee to testify that he told the company representatives how he felt or how he felt came to their attention. But the questions you said you would ask, and I have said twice on the record to protect your record, I would not have permitted those inquiries into the state of mind, about *how* he felt prior to April 19th or whatever the crucial date is.

MR. HOPSON: I would only like to make a motion to conform the pleadings to the evidence.

JUDGE BOTT: That goes to rather insignificant points. It

is like the spellings of names and dates?

MR. HOPSON: Yes, Your Honor.

JUDGE BOTT: That would be in effect anyway.

Off the record.

(A discussion was held off the record.)

JUDGE BOTT: On the record.

I am fixing the date for the filing of briefs as September 18, 1973, in Washington, D.C. As you all know, that is the filing date in Washington, not the mailing date. We are bound by the Rules and Regulations of the Board.

If there is nothing further, this hearing is closed.

(Whereupon, at 2 p.m., the hearing in the above-entitled matter was closed.)

## PART III

THE FOLLOWING MATERIALS ARE PART OF THE RECORD IN HUMPHREY, ETC. V. RETIRED PERSONS PHARMACY t/a NRTA-AARP PHARMACY (D.D.C., CIVIL ACTION NO. 1721-73), A COURT PROCEEDING INSTITUTED PURSUANT TO SECTION 10(j) OF THE ACT. THESE DOCUMENTS ARE NOT PART OF THE RECORD IN THIS PROCEEDING, BUT ARE INCLUDED IN THIS PORTION OF THE APPENDIX AT THE REQUEST OF PETITIONER, RETIRED PERSONS PHARMACY.

NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

October 24, 1974

Roger S. Kaplan, Esquire
Jackson, Lewis, Schnitzler
& Krupman
261 Madison Avenue
New York, New York 10016

Re: No. 74-1651--Retired Persons Pharmacy,
t/a NRTA-AARP Pharmacy
v. N.L.R.B. (C.A. 2)
Board Case No. 5-CA-6108

Dear Mr. Kaplan:

Enclosed is the Board's counterdesignation of additional record materials to be included in the printed appendix for this case. I have just now noticed that you have designated certain documents from the proceedings in the 10(j) case. Since these documents are not a part of the record certified to the court under Rules 16 and 17, F.R.A.P., the Board will object to their inclusion in the printed appendix. We would, however, have no objection to your lodging the documents with the Court in a separate volume or binder. If you have any questions on this, please give me a call.

Very truly yours,

Robert G. Sewell, Attorney

Enclosures

NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

October 31, 1974

Roger S. Kaplan, Esquire
Jackson, Lewis, Schnitzler
& Krupman
261 Madison Avenue
New York, New York 10016

Re: No. 74-1651--Retired Persons Pharmacy
t/a NRTA-AARP Pharmacy
v. N.L.R.B. (C.A. 2)
Board Case No. 5-CA-6108

Dear Mr. Kaplan:

In accord with our telephone conversation of May 31, 1974, the Board confirms its stated desire that materials from the record in Humphrey v. Retired Persons Pharmacy (Civil No. 1721-73 on appeal 73-2168) be set off by a blue or red divider with typewritten language as follows thereon:

> The following materials are part of the record in Humphrey, etc. v. Retired Persons Pharmacy t/a NRTA-AARP Pharmacy (DDC, Civil Action No. 1721-73), a court proceeding instituted pursuant to Section 10(j) of the Act. These documents are not part of the Record in this proceeding, but are included in this portion of the Appendix at the request of Petitioner, Retired Persons Pharmacy.

The Appendix itself may be titled simply "Appendix," and need not note the inclusion of these materials. If there are any questions concerning this, please call.

Very truly yours,

Michael Josserand

Michael Josserand, Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

**********

WILLIAM C. HUMPHREY, Regional Director of the Fifth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,

1019 Federal Building
Charles Center
Baltimore, Maryland 21201

Petitioner,

v.

RETIRED PERSONS PHARMACY, T/A NRTA-AARP PHARMACY,

1224 - 24th Street, N.W.
Washington, D. C. 20037

Respondent.

Civil Action No.
1721-73

**********

PETITION FOR INJUNCTION UNDER SECTION 10(j) OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

To the Honorable, Judges of the United States Court for the District of Columbia:

Comes now William C. Humphrey, Regional Director of the Fifth Region of the National Labor Relations Board (herein called the Board), and petitions this Court for and on behalf of the Board, pursuant to Section 10(j) of the National Labor Relations Act, as amended (61 Stat. 149; 73 Stat. 544; 29 U.S.C. Sec.160(j); herein called the Act), for appropriate injunctive relief pending the final disposition

of the matters involved herein pending before the Board on a complaint of the General Counsel of the Board charging that respondent has engaged in, and is engaging in, acts and conduct in violation of Section 8(a)(1) and (5) of the Act. In support thereof, petitioner respectively shows as follows:

1. Petitioner is Regional Director of the Fifth Region of the Board, an agency of the United States, and files this petition for and on behalf of the Board.

2. Jurisdiction of this Court is invoked pursuant to Section 10(j) of the Act.

3. On or about May 22, 1973, Metropolitan Guild of Pharmacists (herein called the union), pursuant to provisions of the Act, filed with the Board a first amendment to a charge filed on May 14, 1973, in Case No. 5-CA-6108 alleging that respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act. A copy of said first amended charge is attached hereto as Exhibit 1 and made a part hereof.

4. The aforesaid charges were referred to petitioner as Regional Director of the Fifth Region of the Board.

5. On or about July 2, 1973, upon the aforseaid first amended charge, the General Counsel of the Board, on behalf of the Board, by petitioner, issued a complaint pursuant

to Section 10(b) of the Act, alleging that respondent has engaged in, and is engaging in, unfair labor practices, as charged, within the meaning of Section 8(a)(1) and (5) of the Act. A copy of said complaint is attached hereto as Exhibit 2 and made a part hereof.

6. There is reasonable cause to believe that the allegations of the aforesaid complaint are true, and that respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, and affecting commerce within the meaning of Section 2(6) and (7) of the Act. More particularly, petitioner has reasonable cause to believe that respondent is interfering with, restraining and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act, and has failed and refused, and continues to refuse, to bargain in good faith with the union and has engaged in a course of conduct designed to undermine the union's status as the certified collective-bargaining representative of respondent's employees in an appropriate unit. In support thereof, and of the request for injunctive relief herein, petitioner shows as follows:

(a) Respondent, a corporation duly organized under and existing by virtue of the laws of the District of Columbia, where it maintains its principal office and place of business at Washington, D. C., is engaged in the sale and distribution of drugs and related products. In the course

and conduct of these operations during the past 12 months, respondent received materials and supplies from places located directly outside the District of Columbia valued at in excess of $50,000, and sold and shipped goods valued at in excess of $50,000 to points located directly outside the District of Columbia.

(b) The union, an unincorporated association, is an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment and other terms and conditions of employment.

(c) On November 29, 1971, the Regional Director for the Fifth Region of the Board, on behalf of the Board, in Case No. 5-RC-7782, certified the union as the collective-bargaining representative of all registered and/or graduate pharmacists employed by respondent at its Washington, D. C. location, but excluding office clerical employees, all other employees, guards and supervisors as defined in the Act.

(d) On or about September 1, 1972, the union as the certified representative of respondent's employees as set forth in paragraph 6(c) above, and respondent executed a collective-bargaining agreement which by its terms remained in full force and effect from May 29, 1972, to May 29, 1973.

(e) Since on or about March 7, 1973, and continuing to date, the union, as the certified representative of respondent's employees as set forth in paragraph 6(c) above, has requested, and is requesting, respondent to bargain collectively with respect to a new agreement covering the rates of pay, wages, hours of employment and other terms and conditions of employment of said employees.

(f) Since on or about April 19, 1973, and at all times thereafter, down to and including the date of filing the instant petition for injunction, respondent has failed and refused, and continues to refuse, to bargain in good faith with the union; has engaged in a course of conduct designed to undermine the union's status as collective-bargaining representative of respondent's employees described in paragraph 6(c) above; and has interfered with, restrained and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act, by:

I. On or about April 19, 1973, and at all times thereafter, refusing to meet and bargain with the union;

II. On or about May 21, 1973, without notice to or bargaining with the union, interrogating its pharmacist employees in the unit set forth in paragraph 6(c) above with regard to their membership in and activities on behalf of the union, and with regard to membership in and activities of other employees on behalf of the union;

III. On or about May 30, 1973, unilaterally and without notice to and bargaining with the union reducing the workweek from 42 1/2 hours to 40 hours.

7. There is reasonable cause to believe that, by the acts and conduct set forth in paragraph 6(f) above, respondent has failed and refused, and is failing and refusing, to bargain collectively in good faith with the union as the certified exclusive collective-bargaining representative of its employees in the unit described in paragraph 6(c) above; has engaged in a course of conduct desgined to undermine the union's status as collective bargaining representative of respondent's employees in said unit; and has interfered with, restrained and coerced and is interfering with, restraining and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act. Thereby respondent has engaged in, and continues to engage in, unfair labor practices within the meaning of Section 8(a) (1) and (5) of the Act.

8. Upon information and belief, it may fairly be anticipated that, unless enjoined, respondent will continue the acts and conduct aforesaid, or similar or related acts and conduct in violation of Section 8(a)(1) and (5) of the Act and will continue to fail and refuse to bargain collectively in good faith with the union; engage in a course of conduct designed to undermine the union's status as collective-bargaining

representative of its employees in the unit described in paragraph 6(c) above; and interfere with, restrain and coerce its employees in the exercise of their rights guaranteed in Section 7 of the Act. Unless the continuation of the said flagrant unfair labor practices is immediately restrained, a serious flouting of the Act will continue with the result that enforcement of important provisions of the Act and of public policy will be thwarted before respondent can be placed under legal restraint through the regular procedures of Board order and ultimate enforcement decree of an appropriate United States Court of Appeals. It may further be fairly anticipated that, unless restrained, respondent will continue the unlawful conduct above set forth, or like or related acts and conduct, during the proceedings before the Board, and during any subsequent proceedings before a Court of Appeals to enforce or review a Board order, with the result that before respondent is placed under any legal restraint to comply with the requirements of the Act, its employees will be deprived of the rights guaranteed them by the Act, including the right to join or assist labor organizations, the right to bargain collectively through a representative of their choice, and the right not to be interfered with, restrained or coerced in the exercise of their Section 7 rights.

9. Further, upon information and belief, to avoid the serious consequences set forth above, it is therefore

essential, appropriate, just and proper, for the purposes of effectuating the policies of the Act and avoiding substantial, irreparable and immediate injury to such policies of the Act, to the employees, the union involved, and to the public interest, and in accordance with the purposes and provisions of Section 10(j) of the Act, that pending final disposition of the matters involved pending before the Board, respondent be enjoined and restrained as herein prayed.

WHEREFORE, petitioner prays:

1. That the Court issue an order directing respondent to appear before this Court, at a time and place to be fixed by the Court, and show cause, if any there be, why an injunction should not issue as follows:

(a) Enjoining and restraining respondent, its officers, representatives, agents, servants, employees, attorneys and all persons acting in concert or participation with it or them, pending the final disposition of the matters involved herein pending before the Board, in the following manner:

I. Interrogating employees concerning their, or other employees', union membership or activities;

II. Unilaterally, and without notice to and bargaining with the union, making any changes in rates of pay, wages, hours of employment, or any other term or condition of employment;

III. In any other manner, or by any means, interfering with, restraining or coercing employees in the exercise of the right to self-organization, to form, join or assist the union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities; and,

IV. In any manner or by any means failing or refusing to recognize the union as the exclusive collective-bargaining representative of all registered and/or graduate pharmacists employed by respondent at its Washington, D. C. location, but excluding office clerical employees, all other employees, guards and supervisors as defined in the Act, or in any manner or by any means failing or refusing, upon request, to meet at reasonable times and bargain with the union as such representative with respect to rates of pay, wages, hours of employment or any other term or condition of employment.

(b) Ordering respondent, upon request, to recognize and bargain with the union as exclusive collective-bargaining representative of all registered and/or graduate pharmacists employed by respondent at its Washington, D. C. location, but excluding office clerical employees, all other employees,

guards and supervisors as defined in the Act, as to rates of pay, wages, hours of employment or any other term or condition of employment of said employees.

2. That upon return of said order to show cause, the Court issue an order enjoining, restraining and directing respondent in the manner set forth above.

That the Court grant such other and further relief as may be just and proper.

Dated at Baltimore, Maryland, this 7th day of September 1973.

WILLIAM C. HUMPHREY
William C. Humphrey, Regional Director
National Labor Relations Board, Fifth Re

PETER G. NASH,

General Counsel,

JOHN S. IRVING,

Deputy General Counsel,

GERALD BRISSMAN,

Associate General Counsel,

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

| | | |
|---|---|---|
| ILLIAM C. HUMPHREY, REGIONAL DIRECTOR f the FIFTH REGION CF THE NATIONAL ABOR RELATIONS BORAD, for and on behalf f THE NATIONAL LABOR RELATIONS BOARD, | : | |
| Petitioner, | : | Civil Action No. 1721-73 |
| v. | : | |
| ETIRED PERSONS PHARMACY, T/A NRTA-AARP HARMACY, | : | |
| Respondent. | : | |

ANSWER TO PETITION

The Respondent, Retired Persons Pharmacy, in response to he Order To Show Cause entered by this Court on the 7th day of eptember, 1973, and in answer to the petition of the Petitioner, ational Labor Relations Board, that this Court enjoin and restrain espondent pursuant to Section 10(j) of the matters involved herein, ending before the Board, respectfully shows:

1. Denies each and every allegation contained in aragraphs 6, 6(f)(I) and (II).

2. Denies that it has sufficient knowledge and information th which to form a belief as to the allegations in Paragraph 6(b).

3. Denies each and every allegation contained in Paragrph 6(e) except admits that a request to negotiate was made on or before March 7, 1973.

4. Denies each and every allegation contained in Paragraphs 7, 8 and 9.

DEFENSE

5. The petition fails to state a claim upon which relief may be granted.

WHEREFORE, Respondent prays that the petition herein be dismissed.

Dated: September 17, 1973

SHEESKIN & HILLMAN

BY /s/ Harry M. Stern
Harry M. Stern
Attorneys for Respondent
1730 M. Street N.W.
Washington, D. C. 20036

202-296-7050

JACKSON, LEWIS, SCHNITZLER & KRUPM

BY /s/ William A. Krupman
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Attorneys for Respondent
11 West 42nd Street
New York, N.Y. 10036

212-947-2000

ONLY COPY AVAILABLE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

* * * * * * * * * * * * * * * * * * * * * * *

WILLIAM C. HUMPHREY, Regional Director of the Fifth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,

Petitioner

v.

RETIRED PERSONS PHARMACY, t/a NRTA-AARP PHARMACY,

Respondent

* * * * * * * * * * * * * * * * * * * * * * *

FILED
OCT 26 19[illegible]
JAMES E. DAVEY, Clerk

Civil Action
No. 1721-73

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on to be heard upon the verified petition of William C. Humphrey, Regional Director of the Fifth Region of the National Labor Relations Board (herein called the Board) for a temporary injunction pursuant to Section 10(j) of the National Labor Relations Act, as amended (herein called the Act), pending the final disposition of the matters involved herein pending before the Board, upon the issuance of an order to show cause why injunctive relief should not be granted as prayed for in said petition. Respondent filed an answer to said petition. A hearing on the issues raised by the petition and answer was duly held on September 26, 1973. All parties were afforded full opportunity to be heard, to present evidence bearing on the issue, and to argue upon the evidence and the law. The Court has fully considered the petition, answer, evidence, arguments and briefs of counsel. Upon the entire record, the Court makes the following:

Findings of Fact

1. Petitioner is Regional Director of the Fifth Region of the Board, an agency of the United States, and filed the petition herein for and on behalf of the Board.

2. Jurisdiction of this Court is invoked pursuant to Section 10(j) of the Act.

3. On or about May 22, 1973, Metropolitan Guild of Pharmacists (herein called the union), pursuant to provisions of the Act, filed with the Board a first amendment to a charge filed on May 14, 1973, in Case No. 5-CA-6108 alleging that respondent, Retired Persons Pharmacy, t/a NRTA-AARP Pharmacy, has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

4. The aforesaid charges were referred to petitioner of the Fifth Region of the Board.

5. On or about July 2, 1973, upon the aforesaid first amended charge, the General Counsel of the Board, on behalf of the Board, by petitioner, issued a complaint pursuant to Section 10(b) of the Act, alleging that respondent has engaged in, and is engaging in, unfair labor practices, as charged, within the meaning of Section 8(a)(1) and (5) of the Act.

6. There is, and petitioner has, reasonable cause to believe that:

(a) Respondent, a corporation duly organized under and existing by virtue of the laws of the District of Columbia, where it maintains its principal office and place of business at Washington, D.C., is engaged in the sale and distribution of drugs and related products. In the course and conduct of these operations during the past 12 months, a representative period, respondent received materials and supplies from places located directly outside the District of Columbia valued at in excess of $50,000, and sold and shipped in interstate commerce goods valued at in excess of $50,000 to points located outside the District of Columbia.

(b) The union, an unincorporated association, is an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment and other terms and conditions of employment.

(c) On November 29, 1971, the Regional Director for the Fifth Region of the Board, on behalf of the Board, in Case No. 5-RC-7782, certified the union as the collective bargaining representative for all registered and/or graduate pharmacists employed by respondent at its Washington, D.C. location, but excluding office clerical employees, all other employees, guards and supervisors as defined in the Act.

(d) On or about September 1, 1972, the union, as the certified representative of respondent's employees as set forth in Findings of Fact 6(c) above, and respondent executed a collective-bargaining agreement which by its terms remained in full force and effect from May 29, 1972, to May 29, 1973.

(e) Since on or about March 7, 1973, and continuing to date, the union, as the certified representative of respondent's employees as set forth in Findings of Fact 6(c) above, has requested, and is requesting, respondent to bargain collectively with respect to a new agreement covering the rates of pay, wages, hours of employment and other terms and conditions of employment of said

employees.

(f) Since on or about April 19, 1973, and at all times thereafter, down to and including the date thereof, respondent has failed and refused, and continues to refuse, to bargain in good faith with the union; and has interfered with, restrained or coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act, by:

I. On or about April 19, 1973, and at all times thereafter, refusing to meet and bargain with the union;

II. On or about May 21, 1973, without notice to, or bargaining with, the union, interrogating its pharmacist employees in the unit set forth in Findings of Fact 6(c) above with regard to their membership in and activities on behalf of the union, and with regard to membership in and activities of other employees on behalf of the union; and,

III. On or about May 30, 1973, unilaterally and without notice to and bargaining with the union reducing the work week from 42 1/2 hours to 40 hours.

7. The acts and conduct of respondent set forth in Findings of Fact 6(f) I-III above, occurring in connection with the operations of respondent, have a close, intimate, and substantial relation to trade, traffic and commerce among the several States and the District of Columbia, and tend to lead to, and do lead to, labor disputes burdening and obstructing commerce and the free flow of commerce.

8. It may fairly be anticipated that, unless enjoined, respondent will continue the acts and conduct aforesaid, or similar or related acts and conduct in violation of Section 8(a)(1) and (5) of the Act and will continue to fail and refuse to bargain collectively in good faith with the union; and interfere with, restrain or coerce its employees in the exercise of their rights guaranteed in Section 7 of the Act.

9. Unless the continuation of the aforementioned unfair labor practices is immediately restrained, a serious flouting of the Act will continue with the result that the enforcement of important provisions of the Act and of public policy will be thwarted before respondent can be placed under legal

restraint through the regular procedures of Board order and ultimate enforcement decree of an appropriate United States Court of Appeals. It may further be fairly anticipated that, unless restrained, respondent will continue the unlawful conduct above set forth, or like or related acts and conduct, during the proceedings before the Board, and during any subsequent proceedings before a Court of Appeals to enforce or review a Board order, with the result that before respondent is placed under any legal restraint to comply with the requirements of the Act, the union's majority status may have been so dissipated by respondent's unfair labor practices that the union will be unable to function effectively as the certified collective-bargaining representative of respondent's employees, to the detriment of the policies of the Act, the public interest, and the interests of the employees involved.

Conclusions of Law

1. This Court has jurisdiction of the parties and of the subject matter of this proceeding, and under Section 10(j) of the Act is empowered to grant injunctive relief.

2. There is, and petitioner has, reasonable cause to believe that:

(a) Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

(b) The union is a labor organization within the meaning of Section 2(5) of the Act.

(c) Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, affecting commerce within the meaning of Section 2(6) and (7) of the Act, and a continuation of these practices will impair the policies of the Act as set forth in Section 1(b) thereof.

3. To preserve the issues for the orderly determination as provided in the Act, it is appropriate, just and proper that, pending the final disposition of the matters herein involved pending before the Board, respondent, its officers, representatives, agents, servants, employees, attorneys, and all persons acting in concert or participation with it or them, be enjoined and restrained from the commission, continuation or repetition of the acts and conduct set forth in Findings of Fact 6(f) I-III above, acts or conduct in furtherance or support thereof, or like or related acts or conduct the commission of which in the future is likely or may fairly be anticipated from respondent's acts and conduct in the past.

Done at Washington, D. C., this 26th day of October, 1973.

United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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WILLIAM C. HUMPHREY, Regional Director of the Fifth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,

Petitioner

v.

RETIRED PERSONS PHARMACY, t/a NRTA-AARP PHARMACY,

Respondent

FILED

OCT 2[illegible] 1973

JAMES F. DAVEY, Clerk
Civil Action
No. 1721-73

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ORDER GRANTING TEMPORARY INJUNCTION

This cause came on to be heard upon the verified petition of William C. Humphrey, Regional Director of the Fifth Region of the National Labor Relations Board, for and on behalf of said Board, for a temporary injunction pursuant to Section 10(j) of the National Labor Relations Act, as amended, pending the final disposition of the matters involved pending before said Board, and upon the issuance of an order to show cause why injunctive relief should not be granted as prayed for in said petition. The Court, upon consideration of the pleadings, evidence, briefs, argument of counsel, and the entire record in the case has made and filed its Findings of Fact and Conclusions of Law, finding and concluding that there is reasonable cause to believe that respondent has engaged in, and is engaging in, acts and conduct in violation of Section 8(a)(1) and (5) of said Act, affecting commerce within the meaning of Section 2(6) and (7) of said Act, and that such acts and conduct will likely be repeated or continued unless enjoined.

Now, therefore, upon the entire record, it is

1. ORDERED, ADJUDGED AND DECREED that, pending the final disposition of the matters involved pending before the National Labor Relations Board, respondent, Retired Persons Pharmacy, t/a NRTA-AARP Pharmacy, its officers, representatives, agents, servants, employees, attorneys, and all persons acting in concert or participation with it or them, be, and they hereby are, enjoined and restrained from:

(a) Interrogating employees concerning their and other employees' union membership or activities;

(b) Unilaterally, and without notice to, and bargaining with, the Metropolitan Guild of Pharmacists, making any changes in rates of pay, wages,

hours of employment, or any other term or condition of employment;

(c) In any other manner, or by any means, interfering with, restraining or coercing employees in the exercise of the right to self-organization to form, join or assist Metropolitan Guild of Pharmacists, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities; and,

(d) In any manner or by any means failing or refusing to recognize the Metropolitan Guild of Pharmacists as the exclusive collective-bargaining representative of all registered and/or graduate pharmacists employed by respondent, Retired Persons Pharmacy, t/a NRTA-AARP Pharmacy, at its Washington, D.C. location, but excluding office clerical employees, all other employees, guards and supervisors as defined in the Act, or in any manner or by any means failing or refusing, upon request, to meet at reasonable times and bargain with the Metropolitan Guild of Pharmacists as such representative with respect to rates of pay, wages, hours of employment or any other term or condition of employment.

2. ORDERED, ADJUDGED AND DECREED that, pending the final disposition of the matters involved pending before the National Labor Relations Board, respondent, Retired Persons Pharmacy, t/a NRTA -AARP Pharmacy, its officers, representatives, agents, servants, employees, attorneys, and all persons acting in concert or participation with it or them, be, and they hereby are, ordered, upon request, to recognize and bargain with the Metropolitan Guild of Pharmacists as exclusive collective-bargaining representative of all registered and/or graduate pharmacists employed by respondent, Retired Persons Pharmacy, t/a NRTA-AARP Pharmacy, at its Washington, D.C. location, but excluding office clerical employees, all other employees, guards and supervisors as defined in the Act, as to rates of pay, wages, hours of employment or any other term or condition of employment of said employees.

Done at Washington, D. C., this 26th day of October, 1973.

United States District Judge